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MONTANA'S SUBDIVISION LAWS: PROBLEMS AND PROSPECTS

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MONTANA'S SUBDIVISION LAWS:

PROBLEMS AND PROSPECTS

A REPORT TO THE

FORTY-SIXTH LEGISLATURE

SUBCOMMITTEE ON SUBDIVISION LAWS

November 1978

Membership

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TABLE OF CONTENTS

		Page
I.	EXECUTIVE SUMMARY	v
II.	SUMMARY OF RECOMMENDATIONS	vii
III.	STUDY RESOLUTION: SJR 43	ix
IV.	CHAPTER I - INTRODUCTION	1
V.	CHAPTER II - LAND USE REGULATION - BACKGROUND AND HISTORY	3
	A. Perspective of Land Use Regulation Nationwide	3
	B. History of Subdivision Regulation in Montana	5
	1. Subdivision and Platting Requirements	5
	2. Sanitation in Subdivisions	8
	C. Review of State Land Use Laws	10
	D. Subdivision Regulation in Western States	18
VI.	CHAPTER III - PROBLEMS IN SUBDIVISION REGULATION AND DEVELOPMENT IN MONTANA . .	23
	A. Analysis of Past Legislation	23
	B. Information Received from General Land Use Literature	23
	1. Housing Costs and Subdivision Review	23
	2. Agricultural Land and Rural Subdivisions	26
	3. Transfer of Development Rights . .	26
	C. Public Hearings and Participation . . .	33
VII.	CHAPTER IV - SUBCOMMITTEE RESPONSE TO PROBLEMS IN SUBDIVISION DEVELOPMENT AND REGULATION IN MONTANA	39
	A. Provision of Public Services to Subdivisions	39

TABLE OF CONTENTS (Continued)

		Page
	1. Water and Sewer Facilities	40
	2. General Services	41
	3. Parks	42
	4. Schools	43
	B. Subdivision and Platting Act	43
	C. Sanitation in Subdivisions Act	50
	D. Rural Building Codes	54
	E. Montana Environmental Policy Act and Subdivisions	55
VIII.	CHAPTER V - SUBCOMMITTEE DELIBERATIONS - CONCLUSIONS	57
IX.	FOOTNOTES	61
X.	SELECTED BIBLIOGRAPHY	63
XI.	APPENDICES A THROUGH S	

SUMMARY

The 1977 Legislature considered many bills on subdivisions and related land use laws. In the final days of the session, the Legislature adopted SJR 43, requesting the Committee on Priorities to assign a study of all Montana's laws concerning subdivisions for the purpose of generally clarifying, updating, supplementing, and revising those laws. The Committee on Priorities assigned this study to the Subcommittee on Subdivision Laws.

The Subcommittee met six times during the 1977-1978 interim and held two public hearings in Billings and Missoula. Members adopted goals for the study and reviewed information on Montana's land use laws, the history of subdivision regulation, subdivision review in other western states, past subdivision legislation, and material from the general body of land use literature.

Following the public hearings and information-gathering sessions, the Subcommittee identified the following problem areas on which to concentrate their recommendations: provision of public services to subdivisions; the Subdivision and Platting Act -- specifically its exemptions, definitions, park dedication requirements, summary review provisions, and public interest review requirements; the Sanitation in Subdivisions Act, including local health review and enforcement of health standards; rural building codes; and the Montana Environmental Policy Act and its relationship to subdivisions.

In response to the critical problems discovered in these areas of subdivision laws, the Subcommittee recommends that the 1979 Legislature:

(1) Enact a bill providing for the issuance of industrial development bonds for the financing of quality water supply and distribution services and sewage treatment and disposal services for residential or commercial subdivisions; (LC0053 - Appendix E)

(2) Enact a bill authorizing counties to issue revenue bonds and refunding revenue bonds for the financing of services for subdivisions; (LC0054 - Appendix F)

(3) Enact a bill clarifying the authority for counties to adopt and enforce building codes and the jurisdiction of those building codes; (LC0057 - Appendix N)

(4) Enact a bill substantially revising the Subdivision and Platting Act to redefine subdivisions, modify exemptions, provide for summary review of certain

subdivisions, provide for special review of multiple minor subdivisions, and specify requirements for master plans in certain cases; (LC0056 - Appendix H)

(5) Enact a bill redefining and elaborating on the public interest criteria for reviewing subdivisions; (LC0058 - Appendix I)

(6) Enact a bill revising the formula for determining park dedication requirements and allowing a portion of park fund to be used for maintenance of existing parks; (LC0059 - Appendix J)

(7) Enact a bill allowing for the creation of Special Improvement Districts and Rural Improvement Districts for the development and maintenance of parks; (LC0060 - Appendix G)

(8) Enact a bill amending the Sanitation in Subdivisions Act to provide for expanded local health review and additional enforcement authority; (LC0063 - Appendix M)

(9) Enact a bill modifying the enforcement responsibilities of county and city attorneys and clerks and recorders with regard to filing of subdivision plats and certificates of survey; (LC0087 - Appendix K)

(10) Enact a bill clarifying the exemption from survey requirements for divisions of land created by state highways; (LC0088 - Appendix L)

(11) Consider the problems of environmental impact statements for subdivisions, possibly requiring the Department of Health and Environmental Sciences to prepare environmental impact statements only at the request of local government and make the Montana Environmental Policy Act useful in deciding subdivision issues but not a burden to the developer;

(12) Approve the package of legislation enumerated above; however, if the Legislature rejects this legislation as being insufficient to solve subdivision-related problems, the Subcommittee on Subdivisions or a similar body should be continued in the next interim, with a possible purpose being the complete rewriting of Montana's subdivision laws.

With the adoption of these recommendations, the Subcommittee on Subdivision Laws hopes to provide a subdivision review process that protects the public from poor subdivision developments and the problems they create for communities, while facilitating the construction of quality subdivision projects and efficient related services.

SUMMARY OF RECOMMENDATIONS

The Subcommittee on Subdivision Laws recommends that the 1979 Montana Legislature:

(1) Enact a bill providing for the issuance of industrial development bonds for the financing of quality water supply and distribution services and sewage treatment and disposal services for residential or commercial subdivisions;

(2) Enact a bill authorizing counties to issue revenue bonds and refunding revenue bonds for the financing of services for subdivisions;

(3) Enact a bill clarifying the authority for counties to adopt and enforce building codes and the jurisdiction of those building codes;

(4) Enact a bill substantially revising the Subdivision and Platting Act to redefine subdivisions, modify exemptions, provide for summary review of certain subdivisions, provide for special review of multiple minor subdivisions, and specify requirements for master plans in certain cases;

(5) Enact a bill redefining and elaborating on the public interest criteria for reviewing subdivisions;

(6) Enact a bill revising the formula for determining park dedication requirements and allowing a portion of park funds to be used for maintenance of existing parks;

(7) Enact a bill allowing for the creation of Special Improvement Districts and Rural Improvement Districts for the development and maintenance of parks;

(8) Enact a bill amending the Sanitation in Subdivisions Act to provide for expanded local health review and additional enforcement authority;

(9) Enact a bill modifying the enforcement responsibilities of county and city attorneys and clerks and recorders with regard to filing of subdivision plats and certificates of survey;

(10) Enact a bill clarifying the exemption from survey requirements for divisions of land created by state highways;

(11) Consider the problems of environmental impact statements for subdivisions, possibly requiring

the Department of Health and Environmental Sciences to prepare environmental impact statements only at the request of local governments; and make the Montana Environmental Policy Act useful in deciding subdivision issues but not a burden to the developer;

(12) Approve the package of legislation enumerated above; however, if the Legislature rejects this legislation as being insufficient to solve subdivision-related problems, then the Subcommittee on Subdivisions or a similar body should be continued in the next interim, with a possible purpose being the complete rewriting of Montana's subdivision laws.

SENATE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN AN APPROPRIATE COMMITTEE TO STUDY ALL OF MONTANA'S LAWS RELATING TO SUBDIVISIONS FOR THE PURPOSE OF GENERALLY CLARIFYING, UPDATING, SUPPLEMENTING, AND REVISING SUCH LAWS.

WHEREAS, the social, economic, and environmental conditions presently existing in Montana make it imperative that Montana's citizens be provided with adequate housing in an economic, efficient, and environmentally sound manner, and

WHEREAS, Montana's laws presently relating to subdivisions are not fully successful in achieving this goal, and

WHEREAS, certain areas of Montana are presently experiencing rapid urbanization and population growth with subsequent reduction of agricultural land; and

WHEREAS, Montana is faced with the possibility of a large population influx in the future; and

WHEREAS, Montana's laws presently relating to subdivisions need to be studied in order to insure that they are adequate to meet the challenge of present and future rapid urbanization and population growth in Montana

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign an appropriate committee, consisting of equal representation of both houses and both parties, to study all of Montana's laws relating to subdivisions for the purpose of generally clarifying, updating, supplementing, and revising such laws and to report its findings and recommendations to the regular session of the 45th Legislature

Approved April 18, 1977

I. INTRODUCTION

Throughout the 1977 legislative session the issue of subdivision development and regulation surfaced as one of controversy and persistent need of positive action. Legislators were called upon to consider at least 13 bills and resolutions addressing some aspect of the subdivision review process. As the session progressed, many legislators concluded that these bills represented only a fraction of the problems associated with Montana's subdivision laws. Many of the state's growing communities were experiencing a severe housing shortage, and its subdivision regulation process received the blame of development interest groups. Concurrently, environmentalists and some agricultural groups cited statistics of large portions of Montana's farmland being lost to poorly planned subdivisions.

As the 1977 session neared adjournment, Senator Harold Dover introduced Senate Joint Resolution 43, which requested the Committee on Priorities to assign an appropriate bipartisan committee to study all of Montana's laws relating to subdivisions for the purpose of generally clarifying, updating, supplementing, and revising those laws. The resolution gained quick approval from both houses and received the signatures of the President of the Senate and Speaker of the House during the final two days of the session. The Committee on Priorities assigned the study to an equally bipartisan committee consisting of four members of the House and Senate Judiciary standing committees and four members of the House and Senate Natural Resources standing committees.

The Subcommittee on Subdivision Laws began its study in June of 1977 with the adoption of goals toward which subdivision regulation should be directed. During the legislative interim the members studied the history of land use and subdivision regulation in Montana, including survey and platting regulation and environmental health controls. The subcommittee reviewed Montana's land use laws directly and indirectly related to subdivisions as well as subdivision regulation in other western states. In identifying the problems associated with subdivision development and regulation in Montana, the subcommittee conducted analyses of past legislation, general literature, and other western states' experience and received extensive testimony at public hearings and informally throughout the proceedings.

The subcommittee then reached consensus on those specific issues upon which action should be taken and developed legislation addressing those problems. Following public review and comment of that draft legislation, the subcommittee adopted final recommendations to be conveyed to the 1979 Legislature.

This report describes the progress of the subcommittee's study, the facts bearing on the action of the subcommittee, the legislation recommended to address the study's goals, and other issues addressed by the subcommittee. The information gathered and discussed in this report is the product of the energy and resources of several public and private organizations that participated in the study. These groups include the Division of Planning, Department of Community Affairs; the Legal Division and Subdivision Bureau of the Department of Health and Environmental Sciences; the Environmental Quality Council; Office of Public Instruction; the Montana Association of Registered Land Surveyors; the Montana Association of Realtors; the League of Women Voters; the Environmental Information Center; the Missoula Freeholders' Association; and several other interested individuals. The subcommittee and its staff are grateful for the participation and assistance of these organizations in conducting this study.

II. LAND USE REGULATION

BACKGROUND AND HISTORY

Perspective of Land Use Regulation Nationwide

Regulation of the use of land for residential and commercial development gained widespread acceptance throughout the states in the 1920's and 1930's with the adoption of basic planning and zoning enabling statutes. During this period, local governments received the prerogative and responsibility of managing growth, although these controls were seldom mandatory. During the Depression and World War II years, in which new land development proceeded at a sluggish pace, local governments confronted few challenges to test the capability of their land use regulatory powers. Through the early fifties, despite the early postwar boom, local governments met their limited land use control responsibilities with little criticism.

Major shifts in population from southern and other rural areas to the major cities, and from the cities to the suburbs during the postwar years, however, caused a dramatic increase in the demand for new residential, commercial, and industrial facilities. By the mid-fifties, some of the urban problems experienced today began to surface with increasing regularity -- environmental degradation resulting from excessive concentration of industrial and commercial facilities, fiscal impacts from rapid residential development resulting in a burden on local communities, transportation problems stemming from unguided sprawling growth, and social tensions, resulting from residential segregation.[1]

During the sixties, a broad critique of local growth management policies gradually developed strength, eventually leading to the more mandatory controls of the present day. The critique focused on three major areas of concern.

The first criticism held that state enabling statutes are permissive, thus allowing local governments to avoid exercising the land use control powers granted them by the state. There was wide variation among the states as to which local governments voluntarily exercised their authority to enact land use plans, zoning regulations, and subdivision ordinances, but the record in most states demonstrated marginal success. As a result, growth was merely shifted to neighboring territory rather than effectively managed. Developers tended to "shop around" for potential sites in areas with incomplete, loose, or nonexistent controls.[2]

The second aspect of the critique concerned the poor quality of growth management techniques in many jurisdictions. Most state enabling statutes failed to require local governing

bodies to adhere to significant procedural or substantive standards. Even in metropolitan areas where development pressures were greatest and local government resources were adequate, controls were exercised haphazardly and inconsistently.[3]

One of the most glaring inadequacies in the optional local regulation was the exercise of controls without regard to a comprehensive land use plan. Many areas with controls never developed such a plan; others ignored their existing plans in implementing zoning and subdivision regulations.

Developers, planners, and other citizens alike saw the practice of allowing widespread and arbitrary use of special devices such as variances, conditional use permits, "floating" zones, and down-zoning as a particularly insidious flaw of local growth management regulation. While some flexibility is obviously essential in land use regulation, the abuse of these devices helped weaken the predictability most of these groups desired.

Lack of public involvement in making sensitive land use decisions constituted another failure of optional local growth management systems. Thus, alienation of many segments of the population when important land use decisions were sprung upon them was prevalent.

Thirdly, many critics asserted that local growth management decisions were very parochial. The effect of one area's land use practices on another community rarely acted as a major factor in land use policy decisions. The garden variety enabling legislation did not require this consideration and provided no mechanism for coordination among local jurisdictions. Nationally, and especially in metropolitan areas, many communities exercised strong exclusionary powers, locking out groups and types of land use not considered socially acceptable or economically advantageous. Other communities welcomed all forms of development, regardless of the impact on neighboring areas.[4]

As these criticisms were echoed by many different segments of the land development and regulation process, state legislatures were again called upon to take innovative action to correct these flaws. Thus the 1970's saw the proliferation of legislation mandating local comprehensive planning, local subdivision control, and local zoning regulation. In addition, acting on other land use issues, legislatures began adopting siting legislation for power plants, large-scale developments, and surface mines. Natural areas legislation protecting shorelands, wetlands, and critical environmental areas enacted during this period emerged as part of this trend. Although in the early seventies stronger state control of land use was seen as the solution to development-related

ills, the mid and late seventies saw the tide turn back to stronger local control. In the end many state legislatures mandated local governments to act through prescribed procedures so that the state would be less involved in the substantive land use decisions occurring throughout its communities.

Not surprisingly, many of the innovative efforts of state legislatures to deal with growth management problems first bore fruit in the West. Western states were experiencing enormous growth pressures related to natural resources, particularly energy development. In addition, western states have been the scene of the greatest land development pressures and have suffered some of the worst abuses in land speculation and rapid, slipshod land development.[5] The Montana Legislature in enacting significant land use legislation in the past several sessions has conformed to this trend.[6]

The next section of this report deals with a specific aspect of this trend -- that of Montana's land use laws related to subdivision development and regulation. The history of Montana's subdivision and platting requirements and regulation of environmental health aspects of subdivision development will be traced.

History of Subdivision Regulation in Montana

Subdivision and Platting Requirements

In 1895, the Legislature enacted the original statutes regulating the platting of cities and towns and the transfer of any lots, blocks, or tracts within those areas. These laws were initially codified in section 5000 of the Political Code of 1895 and reenacted in 1907, 1921, and 1947, when they were codified as Title 11, Chapter 6, R.C.M. 1947. The original "subdivision" laws required plats and surveys to be recorded; dictated plat requirements; and prescribed monumentation and survey requirements, certificates of survey, certificates of dedication, and abstracts of title. The law also required city or town councils or boards of county commissioners to approve or reject the plats and prohibited the selling of lots from a plat until it had been approved and properly recorded; penalties for violation were provided. The original law also provided that small and irregularly shaped tracts of less than 10 acres must be platted, surveyed, and certified before sale.

In 1917, the park dedication requirement that prescribed that one-ninth of the lot area of a subdivision be dedicated to parks and playgrounds, or that cash be given in lieu of land was added to the list of requirements for a plat. In 1921, the plat required the inclusion of the following items:

"1. All streets, alleys, avenues, and highways, and the width thereof.

"2. All parks, squares, and all other grounds dedicated or reserved for public uses, with the boundaries and dimensions thereof.

"3. All lots and blocks with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot and block.

"4. The angles of intersection of all boundary lines of the lots and blocks wherever the angle of intersection is not a right angle.

"5. The location of all stone or iron monuments set to establish street lines.

"6. The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

"7. The location of all section corners or legal subdivision corners of sections within the limits of said plat.

"8. The adjoining block corners of all surveyed and adjoining additions, and the streets, alleys, avenues, and highways of such adjoining additions, for the purpose of showing how the new plat and survey conform to such adjoining addition of surveyed and platted ground.

"9. For the purpose of promoting the public comfort, welfare, and safety, such plat and survey must show that at least one-ninth of the platted area, exclusive of streets, alleys, avenues, and highways, is forever dedicated to the public for parks and playgrounds; the one-half of such area so dedicated to the public for parks and playgrounds may be distributed in small plots of not less than one block in area through the different parts of the area platted; and the one-half shall be consecrated into larger parks on the outer edge of the area so platted. The board of county commissioners of the county, or the council of the city or town, is hereby authorized to suggest suitable places for such parks and playgrounds, and for good cause shown may make an order in the proceedings of such body (to be endorsed and certified on said plat), diminishing the amount of such area herein required to be dedicated as public parks and playgrounds to not less than one-twelfth thereof, exclusive of streets, alleys, avenues, and highways; provided, that where such platted area consists of a tract of land containing less than 20 acres, such board of county commissioners of the county, or the council of the city or town, may make an order in the proceedings of such body,

to be endorsed and certified on said plat, that no park or playground be set aside or dedicated." (11-602, R.C.M. 1947, eventually repealed by Chapter 500, Laws of 1973)

The law remained substantively static until 1953 when the legislature required that approval of small and irregularly shaped parcels of 10 acres or less be obtained from the city or town council or board of county commissioners before filing and sale. The law also required local governing bodies to develop rules for subdivisions.

Chapter 6, as it existed in 1971 before adoption of the new subdivision law, was ineffective in many respects. It did not set a deadline for the adoption of local subdivision regulations nor provide sanctions for failure to adopt them. Consequently, few cities and counties had adopted the required regulations or established procedures for the review of proposed subdivisions. The law had become confusing and contradictory to many local officials and developers, a situation which obstructed uniform interpretation and administration. Also, many new parcels of land of 10 acres or less were created by metes and bounds legal descriptions rather than by the surveying and platting process.

In the 1973 legislative session two major subdivision bills were introduced -- House Bill 341 sponsored by Representative Arthur Shelden, and Senate Bill 208 sponsored by Senator Jean Turnage. The legislature eventually enacted S.B. 208 as the Montana Subdivision and Platting Act after incorporating some key features from H.B. 341.

The Subdivision and Platting Act, which repealed Title 11, Chapter 6, has the twofold purpose of achieving accurate land records and proper surveys and attaining orderly land development through local review and approval of subdivisions. As passed in 1973, the law defined a "subdivision" as two or more parcels of 10 acres or less, including condominiums and mobile home and recreational vehicle parks. All cities and counties were required to adopt local subdivision regulations by July 1, 1974, or enforce regulations imposed by the Planning Division of the Department of Community Affairs. The act required the Division to promulgate minimum requirements for local subdivision regulations and to adopt uniform standards for survey monumentations and records of survey.

The Planning Division also published a model subdivision regulation to assist local officials and planning boards in drafting local regulations. Sixty-seven cities and 42 counties adopted subdivision regulations by the July 1, 1974 deadline. The Planning Division promulgated regulations for the other units of local government.

In 1974 the legislature amended the law through H.B. 1017, sponsored by Representative Art Shelden. Those amendments included changing the definition of "subdivision" to apply to parcels less than 20 acres in size; increasing the list of exemptions from review by allowing an "occasional sale" from a tract every 12 months; allowing privately owned parkland to meet the park requirement; exempting from review all or parts of a building constructed on an approved subdivision lot; and validating all land records filed or executed prior to July 1, 1973, regardless of conformance to existing platting requirements. (This provision responded to an attorney general's opinion that land titles not filed or recorded in compliance with platting and surveying laws and regulations were invalid.)

The 1975 Legislature enacted H.B. 666, introduced by Representative John Vincent. This provision requires governing bodies, before approval, to make a written finding of fact that a subdivision is in the public interest, as determined by eight criteria.

Three bills amending the act and sponsored by Senator Peter Story were passed by the 1977 Legislature. These amendments include: allowing relocation of common lot lines and the aggregation of lots in platted subdivisions without review, but requiring lot divisions that increase the number of lots to be reviewed and filed as plats; waiving the requirement for an environmental assessment and a finding of public interest where a subdivision is in an area covered by a master plan, zoning, and capital improvements plan; permitting the sale of lots by contract after preliminary plat approval; and requiring expeditious review procedures for the first minor subdivision from a tract.

In May, 1977, the Montana Supreme Court ruled invalid one of several Planning Division's administrative rules that defined when use of the exemptions constituted an evasion of the act. That rule stipulated that changes to subdivision plats were to be made only by an amended plat, which requires local government approval. This decision was superceded by the 1977 legislative amendment regarding changes to platted subdivisions, as discussed in the preceding paragraph.

Montana's planning and zoning laws developed concurrently to the subdivision regulation statutes; however, planning and zoning received considerable impetus with the passage in 1973 of the Subdivision and Platting Act.

Sanitation in Subdivisions

In addition to survey and platting requirements, subdivisions over the years have been required to meet certain health standards for water quality and potability, sewage treatment

and disposal, and solid waste management. The Department of Health and Environmental Sciences, which is charged with establishing and administering these health standards, first adopted rules governing sanitation in subdivisions in 1961. Then in 1967, the Legislature, in enacting Chapter 197 (codified in Title 69, Chapter 50), declared that

> "it is the public policy of this state to extend present laws controlling water supply and sewage disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems."

In 1967, the law applied to any tract divided into two or more parcels, any of which was less than five acres in size along an existing or proposed street, highway, easement, or right-of-way for sale, rent, or lease as residential, industrial, or commercial building lots described by reference to a map or survey of the property. Each subdivision lot was subject to a "sanitary restriction which prevented buildings or shelters from being built on it until approval was given by the state health department and the restriction was lifted."

The 1973 Legislature enacted a bill (HB 465, sponsored by Representative Max Baucus) significantly strengthening the department's authority over sanitation in subdivisions.

General policy was revised to permit explicit review of sewage and solid waste disposal to protect the quality of water for public, domestic, agriculture, industry, recreation, and wildlife uses. The definition of subdivision was amended from the 1967 definition of "less than five acres" to "10 acres or less" and conformed to the definition in the Subdivision and Platting Act. Metes and bounds transfers or contracts for deed no longer were exempt from regulation. "Sanitary restriction" -- the department's key instrument of regulation --was defined as a prohibition against the erection of any building until the department approves plans for water supply, sewage, and solid waste disposal facilities.

The critical change made by H.B. 465 was that no map or plat may be filed, no building may be erected or occupied, and no lot may be sold until the local health officer has approved water availability and quality and sanitary facilities, and the state department has indicated the subdivision is not subject to sanitary restriction. Another section stipulated that as long as a subdivision is conditional, no map or plat may be filed, no building may be erected or occupied, and no lot may be sold.

Detail was added to the department's rulemaking duties. Rules must provide for description of the land and evidence of an available water supply, dependable and sufficient in

quality and quantity. Additional sections specify a hearing procedure for aggrieved subdividers and enforcement of the act, as well as penalties for violations.

In 1975, the Legislature expanded the definition of a subdivision to include parcels containing less than 20 acres, conforming to amendments in the Subdivision and Platting Act. In that year the department received the additional responsibility for reviewing divisions of land exempt from local review under the Subdivision and Platting Act, such as occasional sales and family conveyances.

The review of water, sewage, and solid waste in subdivisions received close scrutiny by the 1977 Legislature for the purpose of streamlining the process. Changes accomplishing this purpose include:

(1) Within master planned areas a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and the disposal of sewage and solid waste are available or will be provided for the subdivision within one year;

(2) The Department of Health and Environmental Sciences (DHES) and the Department of Community Affairs (DCA) must propose and distribute a joint application form;

(3) DHES must delegate review of minor subdivisions to local governments with qualified personnel to review proposed water supply, sewage, and solid waste disposal systems;

(4) DHES may monitor and inspect installations of public water supply and sewage disposal systems;

(5) The types of land divisions to come under DHES review are clarified.

The two major laws, then, directly dealing with regulation of subdivision development were at this evolutionary stage when the subcommittee began its deliberations in June, 1977. The next section of this report reviews the related land use laws considered by the subcommittee in an attempt to determine the broader range of problems associated with subdivision regulation.

Review of State Land Use Laws

In a broad sense, any number of different state statutes influence decisions on how land is to be developed for various forms of human activity. In order to familiarize themselves with statutes that might peripherally affect subdivision regulation and yet cause difficulty with the review process, the subcommittee members reviewed a summary

of state land use laws. A myriad of state statutes and local ordinances and regulations confront developers and officials alike. The subcommittee's review covered the following statutes:

I. Acquisition and Disposition of Public Lands

A. Eminent Domain (93-9901 through 93-9944)[7]

B. Easements on State lands for Public Purposes (81-801 through 81-805)

C. Powers of Cities or Towns (11-964, 977, 3311)

D. Powers of Counties (16-1009, 1030)

II. Annexation of Land

A. By Council Resolution (11-401 through 11-405)

B. On Petition of Residents (11-506 through 11-511)

C. Annexation of Contiguous Town (11-405)

D. Contiguous Land Owned by Federal, State, or Local Government (11-511)

E. Planned Community Development Act (11-514 through 11-526)

F. Provision of Services Outside City (11-1001)

G. Exclusions of Land From City (11-501 through 11-505)

III. Planning and Zoning

A. Planning (11-3801 through 11-3842.1)

1. Formation of Boards

2. Powers and Duties

3. Jurisdictional Areas

4. Master Plan

B. Zoning -- City Zoning Commission (11-2701 through 11-2711)

1. Adoption of Regulations

2. Interim Zoning

3. Board of Adjustments

C. County Zoning -- Application (16-4701 through 4711)

1. Purpose and Policy

2. Adoption of Regulations

3. Interim Zoning

4. Board of Adjustments

D. County Planning and Zoning Districts (16-4101 through 4107)

IV. Subdivisions

A. Subdivision and Platting Act (11-3859 through 3879) (see previous section)

B. Foreign Land Sales Act (67-2101 through 2136)

1. Out-of-State Sales

2. Truth in Advertising

V. Special Land Use Restrictions

A. Airport Zoning (1-701 through 709)

1. Airport Hazard Zones

2. Airport Influence Areas

B. Floodway Management (89-3501 through 3515)

1. Duties of Department of Natural Resources and Conservation

2. Minimum Requirements

3. Permits

4. Enforcement

C. Protection of Lake Areas (89-3701 through 3712)

1. Adoption of Regulations

2. Permit Procedures

3. Enforcement and Court Review

D. Highway Right-of-Way (32-4310)

VI. Taxation

A. Greenbelt Act (84-437.1 through 437.17)

1. Requirements

2. Roll-back

B. Montana Economic Land Development Act (84-7501 through 7521.1)

1. Procedures

2. Operation

3. Residential Areas

4. Commercial Areas

5. Industrial Areas

6. Remodeling

VII. State-Owned Lands and Resources Policy (Title 81) [This section went into great detail but was not considered at length by the subcommittee.]

VIII. Water, Sewer, and Solid Waste (11-926)

IX. Transportation and Utilities

X. Special Districts and Financing

A. Special Improvement Districts (11-2201 through 2290)

1. Procedures

2. Bidding and Contracting

3. Bonds and Assessments

4. Revolving Fund

5. Special Provisions

a. Streets

b. Pedestrian malls and off-street parking

c. Sidewalks, curbs, and gutters

d. Street lighting

e. Street sprinkling

f. Sewer and water systems

B. Rural Improvement Districts (16-1601 through 1638)

1. Procedures

2. Bidding and Contracting

3. Assessments

4. Revolving Fund

5. Special Provisions

a. Lighting

b. Sewers

C. Municipal Revenue Bond Act (11-2401 through 2414)

D. Metropolitan Sanitary/Storm Sewer Districts (16-4401 through 4418)

1. Procedures

2. Bidding and Contracting

3. Bonding

4. Assessments

5. Reserve Fund

E. County Water and Sewer Districts (16-4501 through 4535)

F. Water Supplies (11-981, 11-1001)

XI. Soil and Water Conservation

A. Districts (76-101 through 117)

1. DNRC

2. Creation

3. Land Use Regulations

4. Discontinuance

5. Funding

6. Special Project Areas

XII. Open Spaces and Natural Areas

A. Open-Space Land and Voluntary Conservation Easement Act (62-601 through 618)

B. Natural Areas Act (81-2701 through 2713)

1. Definition

2. Designation

3. Management

4. Removal of Designation

XIII. Recreation and Parks

A. County Parks and Recreation Areas (16-4810 through 4818, 62-101, 102, 16-1131)

B. City, Town, and School District Civic Centers, Parks, and Recreational Facilities (62-201 through 215)

C. Liquor Resort Licenses (4-4-204)

XIV. Wildlife

A. Stream Alterations - Natural Streambed and Land Preservation Act (26-1501 through 1523)

1. Procedures

2. Emergencies

3. Monitoring

XV. Housing and Urban Development

A. Building and Loan Associations (7-101 through 152)

B. Urban Renewal Law (11-3901, et seq.)

1. Policy

2. Workable Program

3. Procedures

4. Powers

5. Urban Renewal Agency

C. Housing Authorities Law

1. Policy

2. Creation

3. Powers

4. County Housing Authority

5. Rural Housing Projects

D. Housing Act of 1975 (35-501, et seq.)

1. Policy

2. Need for Program

3. Powers of Board

E. Fire Marshal Approval of Building Construction (69-1801, et seq.)

F. Building and Mobile Home Standards

1. Municipal Building Codes (69-2105, et seq.)

2. Permit

3. Variances

4. Mobile Home and Recreation Vehicle Standards

XVI. Special Districts

A. Mosquito Control (16-4201 through 4214)

B. Weed Control (3-802.1 through 814)

C. Weed Control Districts (16-1701 through 1722)

XVII. Solid Waste

A. Refuse Disposal Areas (69-4001 through 4010)

B. Refuse Disposal Districts (69-6001 through 6013)

C. Solid Waste Management (Ch. 542, L. 1977)

1. Regulation and Enforcement (Ch. 575, L. 1977)

2. Hazardous Wastes

3. Grants and Loans for Solid Waste Management Facilities

XVIII. Water Pollution

A. Water Pollution Act of Montana (69-4801 through 4827)

1. Policy

2. Board of Health

3. Water Quality Standards

4. Department of Health and Environmental Sciences

5. Water Pollution Control Advisory Council

6. Permits

7. Water Treatment Facilities - Grants

8. Enforcement

B. Public Water Supplies (69-4901 through 4908)

1. Policy

2. Implementation

C. Water Treatment Plant - Operators (69-5901 through 5912)

D. Cesspools, Septic Tanks, Privies (69-5401 through 5408)

E. Sanitation in Subdivisions (69-5001 through 5009) [See previous section.]

F. Campgrounds and Trailer Courts (69-5601 through 5607)

[Footnote #8]

After spending nearly an entire meeting in a cursory review of these land use-related statutes, the subcommittee determined that with the time and financial constraints of the study, they would be able to focus on relatively few of these laws. Subcommittee members noted the vastness and confusing nature of all the laws and regulations confronting developers and officials and expressed the desire for simplification of the review process.

The proliferation of environmental and land use controls at all levels of government has greatly increased the complexity

of the development process. Many people have urged that control systems be simplified so that prospective developers can deal with fewer regulatory agencies. In the next chapter, this problem will be discussed at greater length; however, this regulatory explosion was one of the first problems with subdivision development to demonstrate itself during the study.

The subcommittee isolated several different segments of land use law on which to concentrate their study. These laws appeared in the initial phases of the study to be areas of particular significance and difficulty. Later testimony from "experts" and citizens involved in subdivision development and review confirmed this preliminary finding. Those laws on which the subcommittee decided to focus include:

(1) Annexation of Land

(2) Planning and Zoning

(3) Subdivision and Platting Act

(4) Water, Sewers, and Solid Waste

(5) Sanitation in Subdivisions Act

(6) Special Districts, Services, and Financing

(7) Building Codes

Although not all these areas received the same degree of consideration or action (especially annexation, which was deemed too complicated for the subcommittee to undertake within its limitations), the subcommittee attempted to direct the study to these issues.

Following this narrowing of the study, the subcommittee decided to survey other western states to determine how they dealt with subdivisions and growth. The next section of this chapter examines this aspect of the study.

Subdivision Regulation in Western States

In order to compare Montana's regulatory process for subdivisions to those of other midwestern and western states who might be experiencing similar problems and perhaps have found a preferable method for solving them, the subcommittee surveyed selected western states. Those states selected to receive questionnaires include: Minnesota, Wisconsin, Iowa, Missouri, Texas, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California and Alaska.

From their preliminary deliberations, the subcommittee directed questions to the selected states on six issues of importance to the study. The subcommittee asked each state to respond to the following questions:

1. Does your state have a stated policy expressing the goals to be accomplished by subdivision regulation?

2. Is there an acreage limitation on subdivisions which come under review in your state?

3. What percent of subdivisions come under the review process in your state?

4. Has your state experienced problems with delays in approval for developers' plans to subdivide? If not, what methods have you used to expedite the process?

5. Are rural subdivisions a significant problem in your state? What measures have been taken to encourage development in urban areas instead?

6. Have you any reliable statistics supporting or disproving that the subdivision review process substantially increases costs for the home buyer in your state?

Sixteen of the 21 states surveyed responded in varying degrees of detail to the questionnaire. Although the responses provide interesting reading (see Appendix A), they are so varied as to provide little correlation to Montana's situation. To be sure, some similar problems and similar lack of solutions (or information to deal with them) manifested themselves. Yet wide disparities in regulation and concern about the issue of review of subdivision development made gleaning any useful information difficult. A brief analysis of the responses to each question and broad trends follows in the next paragraphs.

Most states that responded had policy statements and goals similar to Montana's. Broad concerns for health, safety, welfare, and "harmonious development," the prevention of overcrowding, protection from fraud, control of the location and soundness of structures, assuring proper monumentation and surveying, the minimization of governmental expenditures, and conservation and development of natural resources were among the most commonly held policies.

No common trend appeared in acreage limitations on subdivisions coming under review. Responses ranged from no state jurisdiction in this matter or total local authority to determine what is reviewed to full review of all divisions of land. Some states gave exemptions similar to Montana's or allowed local governments to adopt various limits depending on population density and other factors.

In responding to the third question concerning the percentage of subdivisions reviewed, most states echoed Montana's lack of reliable and agreed upon data to support a definite answer. Those states supplying definite figures basically said that only "illegal" subdivisions escaped review.

The fourth question regarding delays in approval for developers' plans to subdivide and any measures used to expedite the review process provoked some interesting responses. Most of the responding states indicated that complaints of serious delays are not commonplace; however, when developers report delays, incomplete filing information causes the problems. In some local jurisdictions, delays in approval occur when an area receiving heavy development pressure does not have adequate staff to review all applications expeditiously.

Nearly all the states had statutory time limits for approval with automatic approval occurring if the state or governing body fails to act within the prescribed time period. A few states, however, allow each local governing body to set the time limits for review. Time periods for approval range from 45 days to 90, with 60 cited most often. Most states allow for one extension of the time limit.

In responding to the fifth question concerning rural subdivisions and channeling of development to urban areas, all but two states, Missouri and Alaska, stated that loss of agricultural land and provision of services to rural subdivisions constitutes a problem. Several states indicated that these problems had not caused sufficient concern to warrant state (legislative) action; however, Oregon, Washington, and Wisconsin reported strong state controls on rural development. The remaining states have not found adequate ways of directing growth toward urban centers.

The final question of whether subdivision review increases costs for the home buyer received uncertain answers from most of the respondents. A majority of the states indicated they have no reliable statistics or information available to adequately answer the question. Although many states reported that planning, zoning, and subdivision review are popularly held to result in increased costs for developers and consequently lot buyers, these respondents felt the "consumer protection" benefits resulting from review offset these costs and possibly save money in reducing the incidence of improperly designed subdivisions.

The survey, then, provided the subcommittee with interesting information on how other western states cope with similar problems. Easy solutions to these problems, however, did not present themselves as a result of the response to the questions. As the study progressed, subcommittee members began to isolate the most glaring problems with subdivision

development and review and to gather information and determine whether legislative action could remedy them. The following chapter discusses this process and the information distilled by the subcommittee.

III. PROBLEMS IN SUBDIVISION REGULATION AND DEVELOPMENT IN MONTANA

In attempting to focus their study on specific problems experienced by developers, planners, local and state government officials, and other citizens in relation to subdivisions, subcommittee members relied in varying degrees on three major sources of information. These sources include: (1) legislation introduced in past legislative sessions; (2) information on specific topics from general literature in the land use discipline; and (3) testimony received from participants in public hearings and in the regular meetings held by the subcommittee. All three of these areas of reference identified essentially the same major deficiencies in the subdivision development and review processes. As a result of consulting these sources, especially the testimony of "experts" and laymen in the field, the subcommittee chose those problems to which it could respond through legislation and other recommendations.

Analysis of Past Legislation

Subcommittee members selected a period of the five preceding years in which to review past legislation dealing with subdivisions. This legislation can be divided into the following categories: (1) unworkable park dedication requirements; (1) fraudulent and misleading land sales; (3) arbitrary zoning and planning; (4) inadequate local review of subdivisions; (5) insufficient acreage limitation; (6) need for public interest review; (7) loss of agricultural land and problems of rural subdivisions; (8) simplification of cumbersome review processes; and (9) provision of services to subdivisions. Although several of these categories conflict with each other, the subcommittee studied the bills recurring in each to help isolate areas needing further research or subcommittee action. (See Appendix B for a table of these bills.)

Information Received From General Land Use Literature

Two major areas of concern that surfaced periodically throughout the study were the increased costs to home buyers resulting from excessive subdivision review and loss of agricultural land to rural subdivisions. Subcommittee members expressed the need for information on these two issues to determine whether legislative solutions to the problems surrounding them could reasonably be developed.

Housing Costs and Subdivision Review

The question of whether government controls are to blame for rapidly increasing housing costs is one which has been debated heatedly on all sides. Yet considering the controversial nature of this issue, very few definitive studies

have been made. Only recently have major land use or urban policy research organizations undertaken to examine these premises. The conclusions resulting from studies of this issue essentially confirm theories to the effect that increased government regulations constitute a significant factor in the high cost of housing; yet these controls have not been instituted in a vacuum for the sake of regulation itself. Consumers have demanded protection from past home development ills; however, some regulations have gone beyond their initial positive objectives.

Government regulation of residential development has increased rapidly over the past several years, both in the scope of its coverage and the magnitude of its impact.[9] The development industry has witnessed a permit explosion in recent years. A project that required one permit a decade ago easily requires many more today. A wide variety of agencies, at all levels of government, issue permits for various types of development, and subdivisions are no exception. (See the Montana Environmental Quality Council's Permit Directory, rev. ed. 1978.) While each regulation and resulting permit represents a response to serious public concerns about a particular problem -- preserving the environment, making homes safer, reducing sprawl, insuring quality drinking water -- and while these concerns are likely to increase rather than diminish, all too frequently the implementation of these regulations results in significant price increases on homes.

Recent years have witnessed a growing dissatisfaction with the complexity of the government review process. "The processes of negotiating a disconnected jumble of procedures may have become so complex as to impede achievement of both the protective objectives of permitting programs and necessary planned growth."[10] Interestingly, these studies and statements come from organizations such as the Center for Urban Policy Research and the Urban Land Institute, institutions that have in the past supported and continue to support development controls. Yet these organizations are beginning to recognize that differences in growth management policies among communities and lack of coordination of development permits may actually aggravate the problem of sprawl. While some fill-in development in managed communities has occurred, and while the housing market in central cities has improved, many projects have been undertaken in outlying areas with less stringent controls, thus creating an even more inefficient development pattern.

Reports have found that many communities have adopted new development standards which are related to environmental protection or changing community attitudes. These standards can add between $1,000 and $3,000 to the cost of a house. Depending on market conditions, these costs may either reduce developer profits (and the developer's ability to

stay in business) or be passed on to the consumer. Complex, time-consuming permit procedures or regulations that restrict the supply of developable land increase land costs, developer carrying costs, and if the market can absorb higher priced homes, profits. These increases, combined with increased interest costs, labor costs, materials costs, etc., have meant housing price increases of over 1.0% in five years in areas subject to "comprehensive growth management programs." These increases have substantially reduced housing opportunities for large numbers of people, including many middle income families.[11]

Analyzing these findings from a perspective of Montana's subdivision laws is a difficult process. The three studies reviewed all focused their surveys and research on major metropolitan areas throughout the United States, e.g., Chapel Hill, North Carolina; Los Angeles, California; New Brunswick, New Jersey; Philadelphia, Pennsylvania; Camden, New Jersey; Minneapolis-St. Paul, Minnesota; San Antonio, Texas; Salinas-Seaside-Monterey, California; and Honolulu, Hawaii. Nearly all the areas studied had development controls more restrictive in character and numerous in quantity; however, doubtless most of the conclusions retain some validity despite these differences. While these studies examined a broad range of controls, including building codes, energy conservation codes, subdivision controls, zoning regulations, growth controls, environmental restrictions, financing regulations, and siting restrictions, some are not applicable to many communities in Montana.

The solutions proposed in the studies of housing costs and government regulation may be applicable to Montana's situation regardless of differences in size and complexity. Some of these simplification procedures (specifically for subdivision regulations) include:

(1) Establish a streamlined approval process; one local office should be responsible for coordinating review of applications;

(2) Reduce the frequency of negotiated agreements as to subdivision requirements to gain excessive improvements from developers;

(3) Establish written, firm standards against which developments can be evaluated;

(4) Develop an equitable manner for allocating the costs of new development between the local jurisdiction and the developer;[12]

(5) Strengthen regional agencies;

(6) Coordinate permit procedures;

(7) Reduce the number of government levels involved;

(8) Establish specialized appellate review.[13]

The subcommittee considered these recommendations to varying degrees during the progress of the study. While "one stop shopping" was rejected by some participants at the public hearings and during other meetings, attempts to streamline the review process were endorsed by the subcommittee. Recommendation numbers 2, 5, and 8 did not receive major attention from the subcommittee. The subcommittee attempted to incorporate remaining recommendations into legislation and other instructions to the 1979 Legislature.

Agricultural Land and Rural Subdivisions

The second area of research undertaken by the subcommittee, that of loss of agricultural land to rural subdivisions, resulted from the concern of many legislators that subdivision laws as presently administered contribute to the development of prime farmlands in Montana's fertile valleys outlying its urban areas. Past legislative subcommittees have grappled with this problem with little success, yet the Subcommittee on Subdivision Laws attempted to gather information to determine ways of protecting agricultural land while providing enough land for eventual, inevitable growth.

A substantial file of studies and articles on preservation of agricultural land was developed and remains on file for public use in Legislative Council staff offices. In addition, the subcommittee solicited information from the Soil Conservation Service and Cooperative Extension Service on how agricultural land may be classified for potential preservation. In summary, this information yielded a problem so vast and seemingly insoluble that the subcommittee abandoned its initial attempts to develop a system of legislation designed to preserve prime agricultural lands in favor of more specific problems with other aspects of subdivision development.

Transfer of Development Rights

One aspect of this area of agricultural land preservation that intrigued the subcommittee and on which a considerable amount of research was conducted was the concept of "Transferable Development Rights" (TDR). Some subcommittee members theorized that coal tax revenues could even be used to fund a TDR system.

An earlier Legislative Council report on preservation of agricultural lands, resulting from a study conducted in the 1975-77 interim, describes the TDR system as follows:

The TDR concept arose out of the widespread dissatisfaction among land use planners and developers alike with conventional

tools for guiding development such as zoning, subdivision regulations, and building codes. From the standpoint of the planner, these methods of control have not prevented leapfrog development, urban sprawl, and destruction of productive farmland. And from the landowners' and developers' point of view, the traditional controls have produced development windfalls for a few while excluding others from these development benefits. The system of TDR was conceived as a method for more equally distributing development benefits while providing an economic incentive to landowners and developers to engage in land use practices that the community determines to be desirable. One such desirable land use goal is the preservation of prime agricultural land.

The basic concept of TDR is simply to restrict development in one area while promoting it in another. The system is based on the idea that development rights, like mineral and air rights, are separate from the actual ownership of land. Thus they can be regulated just as mineral and air rights are. A development right is defined as that right under which an owner of land may change its uses, usually by building structures, subdividing, or in some other way developing the property. For example, if the agricultural value of a given acre of land is $200 but the market value is $600, then the difference between the two figures is probably primarily the land's development potential or the landowner's development right. Fundamental to the TDR system is the concept that under governmentally established guidelines, development rights may be transferred in specific quantities, from one parcel of land to another parcel not necessarily contiguous, but in the same development rights district or zone.

The answer to the question of how TDR systems work must be primarily theoretical, because the TDR concept is still relatively new and untried in this country. However, two basic steps are required for a state or community to establish a TDR program:

(1) The governing body must designate those areas in which they wish to preserve agricultural land or restrict development. The owners of land in these designated areas would then be issued certificates for each unit of land that they would not be able to develop.

(2) Another area would then be designated where the development rights certificates could be transferred.

The owners of land in the developable areas are then required to purchase development rights certificates from owners of preserved land, should the former group want to develop their land. To insure the marketability of TDR certificates, the governing body must provide some form of incentive "zoning." This zoning would permit developers to build beyond the maximum limits allowed under preexisting zoning

regulations if they possessed a development rights certificate, thus promoting a demand for the certificates.

TDR works in another way when a local governing body purchases particular property or development rights, such as scenic easements or agricultural rights. This system is embodied in the Suffolk County, New York, system, a detailed discussion of which is available in Legislative Council resource material.

Clearly, the TDR system is not a replacement for planning and zoning. In fact, planning would have to take place for it to function. Areas of desirable development and of preservation would have to be agreed upon. However, the creation of these areas would be made acceptable because landowners would be compensated for a lowering or raising of the value of their land as a result of the designation. Two proponents of TDR, Chavooshian and Norman, state in a feasibility study resulting in legislation for New Jersey, that "more predictability, essential to effective planning, is promoted since all open-space designations are identified and permanently locked in the master plan and its zoning regulations." Also, since the state and community know where expansion is permitted, as well as the level of growth, a state or community may plan for increasing needs.

The system of transferable development rights has been applied in only a few jurisdictions throughout the country. It has been proposed statewide in Maryland, New Jersey, Colorado, Wisconsin, and Oregon, but as of September, 1975, had not been enacted in any of the states that were surveyed. Legislation enabling local jurisdictions to institute TDR have been more successful. These include the New York and Chicago Landmark Preservation Plans, the Puerto Rican Phosphorescent Bay Plan, Suffolk County, New York, and Bridger Canyon in Montana. The latter two instances are of particular interest.

Suffolk County, New York, has adopted a modified TDR system to protect dwindling but essential potato and vegetable farming from rapid urban development. A local zoning ordinance (#26, Sect. 2-40-30) permits an optional transfer of development rights to preserve prime agricultural lands. In certain cases farmers are allowed to transfer the development potential of their lands to another tract in a different district which permits a higher density. The farmland would then become part of a municipal land trust for perpetuity. The farmer could continue to farm on the land for a nominal rent fee, all the while benefiting from the development taking place on the second tract.

The Bridger Canyon experience is an example of local landowners establishing their own district and operating a TDR. At the May, 1975 meeting of the Montana Association of Planners and Montana Association of Planning Board members,

Ms. Jane Newhall, a resident of Bridger Canyon and instigator of the program, described how local residents were attempting to save the canyon from increasing loss of grazing and hay land to second home development related to the Bridger Bowl Ski Area by establishing a type of private TDR system among landowners. It should also be noted that the 1975 Open-Space Land and Voluntary Conservation Easements Act (chapter 489, Laws of 1975) is a limited form of a TDR proposal. Under this act development rights are exchanged for favorable tax treatment and other benefits. As yet it is too early to evaluate these TDR systems.

The literature on transferable development rights is replete with theories on how different forms of the idea can work. Unfortunately they are all just theories. The primary disadvantage to the system is the fact that it is untested on a broad scale. In Montana, where comprehensive land use planning has not gained widespread acceptance, the TDR's reliance on such planning also makes its acceptance unlikely except in small areas subject to severe development pressure. There are many kinks in the TDR system to be worked out, such as how the rights will be taxed and how to insure the districts will be created fairly. These and other problems discussed in the literature on TDR mar the attractive features of the system, which are compensation for the "taking" of development rights and an economic incentive, not just government regulation, for good land use and preservation of agricultural land.[14]

Since the publication of the Legislative Council report, two other states (Florida and Maryland) have had TDR proposals introduced in their legislatures. The New Jersey legislature continues to consider TDR proposals, and a bill aiding the creation of TDR's awaits resolution in Congress. Copies of these bills are available in Legislative Council files and a brief description of each follows:

1) Florida: The bill authorizes counties and municipalities that have adopted comprehensive plans for development and related zoning ordinances to transfer development rights from lands of environmental sensitivity, lands providing renewable resources, and lands and structures of historical, archaeological, and cultural significance to lands capable of receiving development. The bill is a fairly simply, four-section bill stating legislative intent and granting local governments authority to exercise police powers through providing for a system of tranferable development rights. The bill gives local governments wide authority to establish rules for limitations, restrictions, conditions, and procedures for TDR, provided the rules are consistent with the comprehensive plan and zoning ordinances. Transfer of development rights is conditioned upon the owners of

the legal and equitable property interest conveying a restriction or easement to the governing body in perpetuity forbidding or restricting development of the parcel except as agreed upon between the owner and the governing body.

2) Maryland: The Maryland bill grants to a specific county (Calvert County) the authority to adopt a transferable development rights system along with an agricultural districting program.* (In Maryland, the laws of each county are printed as "articles" of the Maryland Code). This bill is much more complex than the Florida bill. It contains:

a) an extensive definition section, in which "development rights" are distinguished from "development options";

b) a section establishing an agricultural district advisory board;

c) a section setting forth criteria for establishing an agricultural district;

d) a section directing the board to designate certain portions of the county as having the greatest potential for maintaining a viable level of agricultural or forest production (any person owning land within the district is not required to join an agricultural district);

e) a section directing the board to designate portions of the county previously zoned A-1 (one dwelling per 5 acres) as a "transfer zone" not in an agricultural district; after a person buys a development option it becomes a development right and the owner of the development right is permitted to increase the intensity of the use of the property he owns within the transfer zone;

f) a complicated section providing for development options which may be converted to development rights according to a specific formula;

g) a section stating that sale of development options does not affect ownership of the property or permissible uses of that property (an owner of property located within an agricultural district is not required to sell his development options);

*Calvert County is a primarily agricultural county under considerable pressure from recreational and second home development.

h) a section providing for a special mechanism for constructing a dwelling unit for a family member or farm employee once all development options have been sold;

i) a section providing for uniform tax assessment of all agricultural land regardless of whether it is included in the program.

3) U. S. Congress: A bill is currently pending in Congress that proposes to aid the effort in preserving prime farmland. Sponsored by Rep. James M. Jeffords of Vermont, H.R. 5882, designated the "National Agricultural Lands Policy Act," would provide federal assistance to state and local governments for demonstration programs to preserve farmland. The bill carries an annual appropriation of $50 million for each of the five years' life span of the program. The assistance is 75% federal and 25% state or local (which may be in-kind). H.R. 5882 has 50 cosponsors as well as the endorsement of the USDA and the Carter administration.

Several states, including New Jersey, New York, Connecticut, Pennsylvania, Florida, Ohio, California, and Washington have adopted resolutions of support for the measure.

4) New Jersey: The New Jersey bill for establishment of a TDR system is perhaps the most refined and best known of the various proposals. The bill, entitled the "Municipal Density Transfer Act," would allow TDR for the preservation of properties of historic, aesthetic, environmental, and economic significance. The following is a brief section-by-section description of the New Jersey proposal:

Section 1 - Short title.

Section 2 - Legislative findings, including various statistics on the amount of agricultural land lost to development (10,000 acres per year), the intent to separate the ownership of land from the right to develop it, and establishing other principles fundamental to the TDR concept.

Section 3 - Another policy statement asserting that the TDR concept constitutes a public necessity.

Section 4 - Definition section going into considerable detail (33 separate definitions).

Section 5 - Provides for the establishing by a municipality of a commission to determine the feasibility of a TDR proposal for the community and to make a recommendation to the governing body.

Section 6 - Describes appointment and term of office of commission members.

Section 7 - Provides for appropriation of funds and staff to commission.

Section 8 - Discusses in considerable detail the criteria the commission should consider in conducting the feasibility study.

Section 9 - Provides for preparation of report and communication of recommendation to governing body; lists elements to be included in report.

Section 10 - Provides for hearing procedures before recommendation is issued.

Section 11 - Prescribes action of the governing body within 60 days and provides for adoption or rejection of commission recommendation; action must be sent to Legislative Oversight Committee; provides for termination of commission.

Section 12 - Details provisions to be included in any development rights ordinance.

Section 13 - Provides for designation of preservation zones and lists criteria defining a preservation zone.

Section 14 - Provides for establishment of transfer zone and lists criteria to be included in the zone.

Section 15 - States that changes in any development rights ordinance or related regulation may not be made unless a property owner can prove to the governing body that the regulation will prevent him from the reasonable use of his land. No change may be made that will alter the character of a preservation zone.

Secting 16 - Requires every D.R. ordinance to provide that certificate of D.R. issued in the preservation zone for one use only may only be exercised in the transfer zone for that use unless otherwise converted and approved by the planning board.

Section 17 - Provides for allocation of certificates of development rights to various portions of preservation zone.

Section 18 - Provides for distribution of certificates and formula for computing the value of the certificates.

Section 19 - Establishes appeal procedure for allocation and distribution of development rights.

Section 20 - Provides for conversion schedule establishing means by which development rights allocated according to the required procedures in the act on the basis of other uses permitted in each portion of the preservation zone may be exercised for another use or uses in the transfer zone.

Section 21 - Requires taxation of development rights to be taxed in the same manner as other real property and describes assessment formula.

Section 22 - Provides for taxation of land within a preservation zone at its agricultural value.

Sections 23 through 27 - Establishes Legislative Oversight Committee to monitor and evaluate the state program and provides funding, staff, and committee responsibilities.

Section 28 - Provides $5 million appropriation to assist the Legislative Oversight Committee and assist municipalities in purchasing certificates of development rights.

Section 29 - Allows an owner of a certificate to voluntarily sell that item to a municipality at fair market value.

Sections 30 through 37 - Housekeeping and minor administrative sections.

Although this research demonstrates that interest in TDR systems continues nationwide, actual implementation of the concept is still rare. While the Subcommittee on Subdivision Laws felt the idea of TDR possessed certain possibilities of success in preserving Montana's farmlands as well as providing for planned growth, the members also concluded that they lacked adequate time and expertise to develop a viable TDR proposal for Montana. Thus this innovative and untested concept was set aside for more immediate and workable solutions to the various problems discovered by the Subcommittee during the course of its study. The next section discusses the public hearings and participation process and its results, upon which the subcommittee heavily relied.

Public Hearings and Participation

From the first meeting of the Subcommittee in June, 1977, and throughout the remainder of the study, subcommittee members actively sought the advice of developers, planners, and other officials, surveyors, environmental groups, and other interested citizens to determine problems with subdivision laws and alternative solutions to them. The Subcommittee did not limit public participation to public hearings, but instead heard testimony during the entire study.

Although the members received an abundance of written research materials from its staff, they depended primarily upon public testimony to identify specific areas of the subdivision review process that need improvement.

In the fall of 1977, the Subcommittee planned two public information hearings to be held in Billings and Missoula. The selection of these cities as locations for the hearings occurred because of the rapid growth experienced in these areas and because of their accessibility to both eastern and western Montanans. Notice of the meetings was mailed to everyone who had previously expressed an interest in the study and to all daily and weekly newspapers in the state. The Subcommittee asked interested persons to submit written testimony on problems they had experienced with present subdivision regulations and specific improvements that might remedy these problems. Participants were asked to describe the effect subdivision development had had on their communities and how these effects could be evaluated.

Substantial numbers of people took part in the hearings, although the Missoula hearing was better attended due to sequence and better publicity. A list of those people appearing in person at the hearings and submitting written testimony is attached in Appendix C.

The response the Subcommittee received showed considerable interest both from the "experts" and from the citizenry. Most comments were lengthy and specific documents demonstrating that significant effort had been made in their preparation.

Because of the volume of the comments received, the Subcommittee asked that the testimony be distilled and organized into subject areas to facilitate their analysis. This section is an attempt to accomplish that task. For a full account of each element of this review, the reader should turn to the minutes of the hearings or to the original documents on file with the Legislative Council.

For purposes of discussion, the comments are divided into the following categories:

I. The Subdivision and Platting Act

   A. The 20-Acre Exemption from Review

   B. Exemptions - General

   C. Dedication of Parkland

   D. Review of Minor Subdivisions

II. Sanitation in Subdivisions - Administration of Health Standards

III. Urban v. Rural Subdivisions

IV. Financing of Services for Subdivisions

V. Energy-Related Considerations in Subdivision Review

VI. Development of Agricultural Land

VII. Zoning

VIII. Administrative Rules and Administrators in General

IX. Miscellaneous

Comments on the Subdivision and Platting Act centered mainly on the exemptions in the law, specifically the 20-acre limitation and the occasional sale and family conveyance exemption. Nearly all those discussing these exemptions agreed that they were not working as they had been intended; however, participants disagreed on how to remedy the situation. Many recommended eliminating the exemptions entirely, while others said the loopholes should be tightened to allow only "legitimate" exemptions from review. A few others suggested that the exemptions be left untouched as they provide the farmer and rancher with the only secure financial backing needed to survive in today's depressed agricultural economy.

Without exception, the people commenting on the acreage limitation maintained that it was counterproductive. Some suggested raising it to 40 or 50 acres, while the others said all land divisions should come under some sort of public review process. Many suggested establishing a summary review process for all subdivisions.

The parkland dedication requirement in the Subdivision and Platting Act also received considerable attention, although the comments varied more than those discussed above. Although most felt the parkland dedication requirement should stay the same, they thought some of the earmarked money should be used for maintenance. Others suggested a need for distinguishing between urban and rural subdivisions in the allocating of parklands.

Two participants indicated that the special provisions for review of minor subdivisions were being abused, leading to major unplanned developments.

The Sanitation in Subdivisions statutes and the administration of health standards were the focus of many participants' comments. These statements spanned a broad range, but a few common elements were:

(1) The DHES should review subdivisions in a more timely manner;

(2) Local health review of subdivisions should occur where counties had the willingness and expertise to do so;

(3) DHES review should precede local planning board review;

(4) DHES should stay within the confines of the law and its time frames.

Three other subjects receiving relatively minor consideration were distinguishing urban v. rural subdivisions, the financing of services for subdivisions, and energy-related considerations in subdivision review.

Development of agricultural land was of concern to many who submitted testimony. While most people indicated that agricultural land should be preserved, they also felt that farmers and ranchers should be adequately compensated for staying on the land. Another suggested incentives for developing from the urban core outward to minimize leapfrog development. One rancher-surveyor advocated making the sale of an occasional tract uncomplicated enough to facilitate the return of enough money to keep the farmer or rancher in business. Another suggestion included using coal tax money to finance a system of transferable development rights.

Zoning, always a controversial topic, was the subject of many hearing participants. Several commented that voluntary zoning was not working to promote good land use and specifically recommended at least changing the minimum acreage requirement. Others asserted that there should be a time limit on zone changes.

The subject of administrative rules and their enforcers was predictably one of substantial comment. These centered on:

(1) The need to avoid duplication in review;

(2) The need to minimize changes in the rules;

(3) The need for more local authority;

(4) The need to expedite the review process;

(5) Simplification of forms and rules;

(6) The necessity of administrators to stay within the bounds of their authority;

(7) The possibility of a one-stop subdivision ombudsman.

Miscellaneous comments covered a broad variety of topics including telephone easements, unscrupulous environmentalists, flood plain restrictions, the leftist evils of land use planning, the need for localities to adopt subdivision law requirements only as minimums, and the authority of the Public Service Commission. Other subjects were rural fire protection, payments to school districts, the Planned Community Development Act, what constitutes the public interest, and air quality considerations.

This brief outline of comments and suggestions contined in the Review and Summary of Problems and Suggested Changes in the Subdivision Review Process (Appendix D) should provide a stimulus to refer to the original documents. The reader should bear in mind that the Summary (Appendix D) is the skeleton of carefully prepared and documented testimony that can provide a sound basis for further decisions on the subdivision review process.

In the next pages of this report, the Subcommittee's efforts to organize and refine the material reviewed in this chapter and to respond through legislation and recommendations to the 1979 Legislature will be examined and discussed.

IV. SUBCOMMITTEE RESPONSE TO PROBLEMS IN SUBDIVISION DEVELOPMENT AND REGULATION IN MONTANA

In the early months of 1978, the Subcommittee began to focus on specific subject areas on which it proposed to offer a response of legislation or other recommendation to the Legislature. These problem areas include:

1) Provision of Public Services to Subdivisions

2) Subdivision and Platting Act

   a) Definitions

   b) Exemptions

   c) Public Interest Review Requirements

   d) Park Dedication Requirements

   e) Miscellaneous

3) Sanitation in Subdivisions Act

   a) Local Health Review

   b) Enforcement

   c) Miscellaneous

4) Rural Building Codes

5) The Montana Environmental Policy Act and Subdivisions

In this chapter, each of these subject areas will be briefly discussed followed by an explanation of the legislation considered and adopted by the Subcommittee to deal with the specific needs of these situations.[14] The final versions of the approved legislation referred to in this chapter appear in Appendices E through N of the report. Legislation considered by the Subcommittee but eventually rejected by the members is included in Appendices O through Q.

Provision of Public Services to Subdivisions

The first issue addressed by the Subcommittee was the problem of providing quality services to subdivisions. Included in the list of services to be provided are such items as water and sewer facilities, schools, parks, roads, and other improvements. The problem of financing these services is

one of importance to developers and taxpayers, and the issue is whether the users of the services should pay for those services or whether the provision of those services is a general obligation of the community's taxpayers. In developing legislation in this area, the Subcommittee essentially agreed that it should be the responsibility of the user of the service, rather than the locality at large, to pay for the service. Of course, the Subcommittee also determined that where a developer is required by the local governing body to install services beyond the direct needs of the new development for coordination with existing municipal or county services, then the local governing body should be required to finance that extra cost.

Water and Sewer Facilities

One of the problems facing developers and local governments alike is the financing of quality water and sewer services for new residential subdivisions, particularly those outside the city limits. At the present time a variety of methods of providing these water and sewerage facilities is available to local governments. These mechanisms include: Special Improvement Districts (SID's), Rural Improvement Districts (RID's), General Obligation Bonds, Municipal Revenue Bonds, Metropolitan Sanitary/Storm Sewer Districts, and County Water and Sewer Districts. The possibility of using industrial development bonds as an additional means to finance these services was discussed and eventually endorsed by the Subcommittee.

Title 90, part 5, chapter 1, of the Montana Code Annotated, provides for the issuance of this type of bond for "any land, any building or other improvement, and all [related] real and personal properties...for use for commercial, manufacturing, agricultural, or industrial enterprises, recreation or tourist facilities, state and federal governmental facilities and retirement housing, hospitals, long-term care facilities, or medical facilities." Thus the present definition of a project eligible for an industrial development bond would need to be amended to allow for the financing of services for new subdivisions.

Bonds issued under this program are limited obligation bonds which do not incur liability on the city coffers if the lessee of the project defaults on the bonds. Security on the bonds arises from a pledge of revenues out of which the bonds are made payable by a mortgage on the project, by a pledge of the lease of the project, or any other device determined by the issuing authority. The project may be taxed at the value of other similar projects.

The advantages to allowing the issuing of industrial revenue bonds for new subdivision services consist mainly of providing one more means of financing services for subdivisions and of providing a means by which property owners at the early development stage would not have to finance eventual expansion of the service.

An argument against such a proposal holds that the federal government is beginning to study more carefully the proliferation of tax-free bonds, and may eventually more strictly regulate the purposes for which the bonds are issued. However, with little opposition, the Subcommittee directed the drafting of LC 0053 (Appendix E) to provide for the issuance of industrial development bonds to finance water supply and distribution systems and sewage treatment and disposal services for residential or commercial subdivisions. The bill simply amends the definition section (90-5-101) of the industrial development bond act to allow for such services and in section 90-5-102 adds a proviso allowing a municipality or county to operate a water or sewage facility if the proposed project connects to an existing system and if such operation would be in the public interest. The Subcommittee endorsed this bill unanimously throughout the final meetings.

General Services

Following adoption of the industrial development bond bill, the Subcommittee discussed the possibility of adopting a bill allowing counties to issue revenue bonds to finance a wide variety of services. Municipalities have held this power for over 50 years with the advantage of having to pledge only the revenue from the specific project to pay off the bond. Presently counties do not have this authority and must pledge the property (or a general obligation) to repay the bond. The Subcommittee felt granting counties this revenue bonding authority would aid in the provision of high quality services outside municipalities where many of the more severe problems in this area exist. Thus the Subcommittee unanimously recommended LC 0054, granting counties the authority to issue revenue bonds for financing construction and maintenance of services and granting counties the authority to issue refunding revenue bonds. (Refunding authority is necessary if the county should want to refinance the revenue bond at a more advantageous rate of interest.) The bill is essentially modeled after the Municipal Revenue Bond Act that has served cities and towns well for over 50 years. Although the Subcommittee submitted this bill to bond experts in Montana and Minneapolis for comments, none were forthcoming. Neither the Subcommittee nor its staff possessed the expertise to judge the quality of specific sections of the bill; however, the Subcommittee endorsed the principles behind it.

During the public hearings, the Subcommittee heard testimony on the necessity for facilitating the creation of SID's or RID's in the urban fringe areas outside the borders of municipalities. Under present law, a petition of 60% of the property owners in the proposed district is needed even to commence the process of an RID. In urban fringe areas experiencing increasing development pressure, the creation of RID's is so difficult as to prevent the financing of certain services deemed desirable by the new homeowners. The Subcommittee explored the possibilities of facilitating the creation of improvement districts in these areas with the drafting of LC 0061 and LC 0062.

LC 0061 (Appendix O) grants municipal governing bodies jurisdiction to create special improvement districts within the 4 1/2-mile radius of the limits of the municipality when a qualified master plan has been adopted for that area. The bill provides incentives for effective master planning for such areas by making creation of SID's contigent on the plan containing a land use plan, housing plan, and public services plan. Municipal governing bodies are granted extraterritorial jurisdiction for the purpose of creating the SID.

In LC 0062 (Appendix P), a different approach to the same problem is directed through the granting of authority to county governing bodies to initiate the creation of rural improvement districts within a 4 1/2-mile radius of municipalities for which a qualified master plan has been adopted. The bill also requires the governing body to initiate the process for creation of an RID for this specific area upon petition of 1% of the qualified freeholders in the proposed district. The provisions of the bill would apply to those areas within a 4 1/2-mile radius of incorporated cities and towns but outside the corporate boundary of the municipality, for which such area a master plan containing a land use plan, a housing plan, and a public services plan has been adopted.

While the Subcommittee initially favored the approaches embodied in these two bills, they eventually rejected both at their final meeting. The members felt there would be tremendous opposition to LC 0061 from county commissioners who feared annexation attempts that could be facilitated by this bill. The Subcommittee supported the concept of LC 0062 but had reservations about jurisdictional conflicts that might be created by its adoption.

Parks

The Subcommittee heard testimony that confusion existed in some communities over whether SID's and RID's could be

created for the purpose of developing and maintaining parks and common areas. Because the members felt that parks and common areas constituted a valid purpose for which improvement districts could be created, they directed the drafting of LC 0060 (Appendix G). This bill simply amends the SID and RID laws in Title 9, part 12, chapters 21 and 41, to allow for financing development and maintenance of public parks and common areas through SID's and RID's respectively. The Subcommittee endorsed this bill unanimously.

Schools

During the public hearings and at several of its last meetings, the Subcommittee considered the problems of the impacts of large subdivision developments or a series of minor subdivisions on schools and school districts' ability to finance necessary expansion. While the members spent a considerable amount of time discussing this problem and reviewing a previously introduced bill for a state financed school construction fund, they resolved that they did not have adequate expertise or time to develop a satisfactory solution to what was indeed a problem.[15] The Subcommittee expressed the hope that the Office of Public Instruction would develop legislation to adequately resolve these financing problems.

Subdivision and Platting Act

The Subdivision and Platting Act itself received the most criticism from participants in the study. Specific problem areas include definitions in the act, abuse of exemptions, vague and potentially arbitrary public interest review requirements, unworkable park dedication requirements, and other miscellaneous provisions. The Subcommittee, in adopting the legislation described in this subsection, attempts to accomplish some form of review of all divisions of land, with comprehensive review granted only to major subdivisions that could cause substantial problems; however, certain cagetories of subdivisions with potentially minimal impacts would receive only an abbreviated, summary review. This summary review would mainly serve to notify local governments of development activity and facilitate better comprehensive planning for development. Problems created by unreviewed subdivisions could theoretically be diminished. Along with this review, the Subcommittee intends to make more explicit what may be considered as the public interest criteria. Through this legislation local government administration of these criteria should become more predictable for developers and citizens affected by the subdivision activity. Park dedication requirements have been simplified and changed so that high density developers will not be penalized. Local governments will be permitted to use a portion of park funds for maintenance of existing parks to prevent the continued sprouting of undeveloped "weed patches" in new

subdivisions. Other miscellaneous provisions regarding exemptions from surveying requirements for highway officials and filing of subdivisions and enforcement responsibilities receive consideration in additional amendments to the act. The Subcommittee directed the policies described above to be drafted into the following legislation:

LC 0056 (Appendix H) revises the Subdivision and Platting Act and related land use statutes to modify exemptions from review, redefine subdivisions, and make other miscellaneous changes in the law. Because this bill is perhaps the most substantive and controversial of the recommended legislation, an outline of the major provisions of the bill by section number is provided.

I. Master Plan Qualifications. (Section 1)

Specifies qualifications for a master plan when local government officials use it as a basis of approval or denial of subdivisions or for certain summary review. For these purposes the plan must contain:

A. A land use plan that identifies geographic areas suitable for residential, commercial, or industrial land uses or sets forth community policy regarding quality or location of urban development;

B. A housing plan that identifies the existing housing units by type and number and the estimated availability of housing by type and number of units;

C. A public services plan that identifies existing services and facilities including but not limited to supply systems, sewage and solid waste disposal, parks, roads and bridges, and police and fire protection; the capacity of each; and identifies needs for expansion of those services and facilities.

II. Definitions. (Section 2)

A. The following terms have been amended:

1. "Preliminary plat" - "utility easements" added to list of elements required [subsection (8)]

2. "Subdivision" - removes 20-acre limitation [subsection (15)]

B. The following terms have been deleted:

1. "Irregularly-shaped tract of land" - this term is no longer used in the act [subsection (6)]

2. "Occasional sale" - this term would no longer be applicable as all these divisions would be reviewed under summary review procedures [subsection (7)]

C. The following terms have been added:

1. "Minor subdivision" - this term is used in several sections and was defined elsewhere in the law; [however, the original definition is modified to clarify that where park dedication is required it must be met by cash in lieu of land - subsection (10)]

2. "Relocation of a common boundary line" - this term is defined because of past confusion over whether new parcels could be created by such a relocation [subsection (13)]

III. What Constitutes a Subdivision. (Section 3)

This section remains the same except for deletion of the "less than 20-acre" limitation.

IV. Exemptions from review but subject to survey requirements - exceptions. (Section 4)

The following major changes were made in the exemptions to the review process:

A. After the first conveyance to each immediate family member, any additional conveyance to the same member must be reviewed under the summary review procedures; [subsection (b)]

B. When a person utilizes the exemption for agricultural purposes, residential, commercial, and industrial uses or structures will be excluded for parcels of less than 40 acres; [subsection (c)]

C. The occasional sale exemption is deleted; [subsection (d)]

D. An exemption for divisions made pursuant to an order of a court of record pursuant to the Uniform Marriage and Divorce Act or the law of decedent to estates, provided that the case number is noted on the certificate of survey, is added; [subsection (e)]

E. An exemption for divisions that could be created pursuant to the law of eminent domain is added. These last two exemptions exist under present law in a section [76-3-201] that did not require survey of those parcels.

By moving these exemptions, court-ordered divisions and divisions that could be created by eminent domain, including divisions for state highways, are now subject to survey requirements. [subsection (f)]

V. Section 5 simply contains one minor housekeeping change.

VI. Summary review for certain subdivisions. (Section 6)

The subdivisions meeting any of the following conditions will be reviewed under summary review procedures, and local governments must provide for this review in their subdivision regulations.

A. Minor subdivisions

B. Subdivisions consisting exclusively of parcels larger than 40 acres

C. Subdivisions within an incorporated municipality or within areas for which a qualified master plan has been adopted (see section 1)

VII. Section 7 deletes the requirement that locally adopted subdivision regulations superseding DCA promulgated regulations shall be no less stringent. DCA agreed that small communities needed this flexibility and the Subcommittee agreed.

VIII. Submission of preliminary plat for review. (Section 8)

New provisions are made for the governing body of a city or town to provide input into subdivisions contiguous to municipal boundaries or separated by a public road. County officials may only approve such subdivisions when a written finding is submitted by the municipality that the subdivision will be compatible with the existing facilities of the municipality. [subsection (2)(b)(iii)]

IX. Review of preliminary plat. (Section 9)

A. Preliminary plats must be reviewed for conformance to a qualified master plan (see section 1).

B. New provisions are added to provide for automatic approval of subdivisions if the governing body fails to act on them within the prescribed time periods. [subsection (2)]

X. Hearings on preliminary plats. (Section 10)

A. Notice must be sent by certified mail. [subsection (2)]

B. The requirement that a planning board's recommendation on a subdivision must be submitted in writing to the governing body not later than 10 days after the public hearing is deleted. This provision placed undue hardship on rural planning boards that met only once a month. (subsection (3)]

XI. Summary review procedures. (Section 11)

Summary review procedures are as follows:

A. For minor subdivisions:

(1) the subdivider may submit either a preliminary plat that complies with local regulations or a final plat that complies with local regulations and the Department of Community Affairs' uniform standards for final subdivision plats. The governing body shall act on the plat of the first minor subdivision from a tract within 35 days of submittal in accordance with 76-3-611 if a final plat is submitted or in accordance with 76-3-610 if a preliminary plat is submitted; automatic approval occurs upon failure to act by the governing body within 35 days;

(2) the governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision;

(3) the requirements for holding a public hearing, preparing an environmental assessment, and finding that the subdivision is in the public interest do not apply to the first minor subdivision created from a tract of record;

(4) second and subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

B. For subdivisions consisting exclusively of parcels larger than 40 acres in size:

(1) through (4) of the above apply;

(5) review and approval are limited to a written determination that access and easements are properly provided.

C. For subdivisions within a municipality or within an area covered by a qualified master plan:

(1) a preliminary plat must be submitted and acted upon except that preparation of an environmental assessment and a finding that the subdivision is in the public interest are not required; failure to act constitutes automatic approval;

(2) a final plat may be approved only after review pursuant to 76-3-611.

XII. Impact resulting from cumulative effect of several minor subdivisions. (section 12)

Two options for dealing with the problems of "multiple minors" were suggested to the Subcommittee:

A. Option I - allows governing body to decide if "multiple minors" have major impact and to review them as a major subdivision.

B. Option II - when three minor subdivisions are proposed within one year for an area within a radius of one mile, the governing body shall review them as a major subdivision.

Subcommittee members chose the first provision mandating a local government to require review as a major subdivision a series of minor subdivisions it has determined has a significant impact on services and the natural environment.

XIII. Repealer of two sections (Section 13)

A. Section 76-3-201 on certain exemptions is repealed and two of the exemptions are moved to 76-3-207.

B. Section 76-3-210 on which subdivisions are exempted from an environmental assessment is repealed. The language from the section is reworded in section 76-3-609.

The above bill was reviewed several times, section by section, by the Subcommittee members at three meetings. Public comments were solicited and considered in preparing this final version.

LC 0058 (Appendix I) modifies and defines the public interest criteria for local government review of major subdivisions. Subsection (1) of Section 1 provides that except for subdivisions eligible for summary review, the governing body must find that the subdivision is in the public interest. Language requiring the governing body to disapprove a subdivision not in the public interest is deleted.

In subsection (2), the present language is changed to require the governing body to issue a written finding that considers at least:

(a) the compatibility of the subdivision with adopted community goals, policies, or plans;

(b) the effect the subdivision would have on public schools, services, and facilities (including the extent to which new or expanded services would be needed to serve the subdivision), who would bear the various costs of the additional services, what legal constraints affect the provision of those services, and whether the subdivision would allow the installation or improvement of services not feasible for present landowners;

(c) the effect the subdivision would have on taxation, such as the effects on taxable valuation, local tax revenues, local mill levies, local government's bonded indebtedness, and special taxing districts;

(d) the effect the subdivision and its construction would have on ground and surface water, air, soils, slopes, vegetation, wildlife, and historical or archaeological sites;

(e) the effect on the public health and safety of present and future residents from potential hazards such as flooding, avalanches, rock slides, high pressure gas lines, high voltage power lines, nearby industrial or mining operations, or unsafe airport or traffic conditions.

These more specific considerations replace the infamous "eight criteria" of need, public opinion, effects on agriculture, local services, taxation, natural environment, effects on wildlife, and public health and safety. The Subcommittee hopes that enactment of this bill will give communities more specific, predictable guidelines for determining the public interest while allowing a certain necessary flexibility for each community's standards.

LC 0059 (Appendix J) modifies the requirements for dedication of park land for subdivisions and allows a portion of park money to be used for maintenance of existing parks. The park dedication formula received considerable attention in past sessions and has been criticized as not relating to density and penalizing people on larger lots. This bill changes the existing formula of 1/9 of five acres and 1/12 of larger parcels to a simple dedication of 1,000 square feet of land per dwelling unit. While the Subcommittee felt this new provision did not satisfy all the criticisms of park requirements, the members felt it should be presented to the full legislature for consideration.

In addition to revising the dedication formula, LC 0059 allows up to one-third of the cash received in lieu of land dedicated under this bill to be used for routine maintenance of existing parks and playgrounds. Park funds must be

spent according to a park plan or policy statement adopted by the governing body before expenditure of park funds. The Subcommittee responded to the requests of local governments in adopting this change.

LC 0087 (Appendix K) prescribes duties of clerks and recorders and city and county attorneys with regard to subdivision filing requirements. An outline of the bill includes:

I. Transfer of title to subdivided land. (Section 1)

A. The clerk and recorder must refuse to accept for filing plats not conforming to the drafting and filing requirements of Title 76, chapter 3. [subsection (2)]

B. The clerk must notify the governing body of any family conveyances filed. [subsection (2)]

C. The city attorney must commence action against persons making illegal transfers within the city limits, or if he fails to do so within 60 days of written notification of the violation the county attorney shall initiate the action. [subsection (3)]

II. Certificate of survey. (Section 2)

The clerk and recorder must refuse to file such certificates not legibly drawn, printed, or reproduced and not conforming to surveying and monumentation requirements. [subsection (4)]

In recommending this bill for passage, the Subcommittee hopes to strengthen enforcement capabilities of the Subdivision and Platting Act.

LC 0088 (Appendix L) modifies the exemption from surveying and platting requirements for lands acquired for state highways. Several surveyors testified to the Subcommittee that the exemption from survey requirements for state highways was causing a hardship when a person who owned a remainder from the highway parcel wished to sell that remainder and no legal record existed for it. This bill, as well as the provision in LC 0056 requiring that lands subject to the eminent domain exemption be surveyed, constitutes an attempt to correct that problem.

Sanitation in Subdivisions Act

In recommending one major bill incorporating substantive and procedural amendments to the Sanitation in Subdivisions Act, the Subcommittee proposes to transfer authority for some health review to local governments and to add necessary

enforcement measures. A discussion of the bill, section by section, follows. LC 0063 (Appendix M) provides for expanded local government review of sanitary requirements for subdivisions, modifies the definition of a subdivision, and provides new administrative and judicial remedies.

Section 1. Definitions. The Department of Health and Environmental Sciences has proposed to add to the definition section a definition of "person" in subsection (4). This definition is consistent with the definition of "person" which is found in both the Water Act and the Clean Air Act, and is proposed here to provide some uniformity to the scope of health department review in environmental matters.

In subsection (8), the definition of a subdivision is changed to conform to LC 0056.

Section 2. What constitutes a subdivision. Again, the "less than 20 acres" language is deleted, thus applying the act to subdivisions of all sizes.

Section 3. Rules for administration and enforcement. In this section, the Subcommittee proposes a new subsection (3) which would provide rules for the review of certain subdivisions proposing individual water and sewage systems by local governments.

The Subcommittee's proposed subsection (4) (a) of this section would add language referring to "subdivision certificate of survey" in addition to "plat and other documentation". This reflects the fact that the Department reviews land divisions which may be described on certificates of survey in addition to those which are described on plats and this would alleviate a considerable amount of confusion which has arisen as a result of the single reference to the term "plat" in the Sanitation in Subdivisions Act. Similar language changes are found in other sections.

Section 4. Lot fees. This section contains only minor housekeeping changes.

Section 5. Enforcement. The Subcommittee has proposed a completely different administrative remedy than the one which presently exists. The present administrative remedy requires, at the outset, a full-blown judicial hearing prior to the issuance of any order. The problem with this administrative remedy is that for minor violations which might be readily cured, the scale of the enforcement effort is so costly and time-consuming as to become prohibitive. In its place, the Subcommittee has proposed an amendment which would allow the Department to issue a notice of violation and order to take corrective action. This would allow the minor violator to achieve compliance without the more

punitive action of a lawsuit, hearing, or possible fine. The alleged violator would, however, have the opportunity of requesting a hearing before the Board if he felt the Department's allegation was incorrect. This amendment is modeled after a similar provision in the Montana Water Pollution Control Act which has been used with considerable success in dealing with widespread minor violations. The resultant benefits of adopting such a provision would be that the Department would have a more efficient method of dealing with minor violations. The use of such a provision would scale down the cost of both enforcement and compliance to a level consistent with the severity of the violations.

Section 6. Penalties. The Subcommittee has proposed an amendment to this section which would allow the Department to collect a civil penalty and in any action for injunction in which it prevails or achieves settlement, to collect its attorney's fees. If the Department does not prevail, attorney's fees will be awarded to the prevailing party.

The rationale for this proposed amendment is that, currently, the act apparently allows only for the collection of a criminal penalty. The Department is currently arguing otherwise in a case in district court, but the legislative history of the act contradicts its position. The only parties who may collect a criminal penalty are the county attorneys. The problem with merely limiting a penalty section to a criminal penalty is that, very often, the violation by the particular developer is compounded by the county's filing a certificate of survey or plat in violation of the Sanitation in Subdivisions Act. In that situation, the county attorney's office would be unable to seek a criminal penalty because of its own complicity in the violation. In that light, the only remedy which the Department currently has is injunctive relief. Under the present system, if a party can get the clerk and recorder to file a certificate of survey improperly, even though he may know that the filing is improper, he suffers no consequence of his action other than correcting it if and when he is caught. If the court issues a temporary restraining order against the developer, he need merely come in and offer to submit to Department review correctly. Accordingly, the Department must spend considerable time and money in the preparation of a suit against a developer and the developer has absolutely no inducement to avoid the violation since the only penalty, should he be caught, would be compliance with the law. As a result, the Subcommittee urges that the legislature adopt a civil penalty which may be sought by the Department as a deterrent to unlawful subdivision activity, and that the Department or the prevailing party, where it must go to the expense to file an action for injunction, may recover for the time that it cost its counsel to pursue the case.

Section 7. Restrictions on subdivision activities. This section contains minor housekeeping changes.

Section 8. Filing of noncomplying map or plat prohibited. These changes are also housekeeping changes. (See section 3)

Sections 9 and 10. These sections are amended to conform to the substantive changes in section 12.

Section 11. Review of development plans - land divisions excluded from department review. This section is entirely reorganized from the previous language, but its three major substantive changes are as follows:

Subsection (2) of this section has been amended to provide the limitation on the exceptions that they are not subject to review by the Department "unless falsely used to evade the provisions of this part." This amendment is proposed in order to put anyone on notice who may use these exemptions that the exemptions are not to be used to subvert purposes of the Subdivision and Platting Act.

Subsection (2)(a) strikes exemptions in 76-3-201 repealed in LC 0056 and applies to those exemptions added in 76-3-204 as amended in LC 0056.

In addition, subsection (2)(b) of this section has added language limiting divisions of land for purposes of acquiring additional land to situations where the division will not occur within any previously platted subdivision. This amendment is proposed so that this particular exemption will not result in the disruption of the spatial integrity of preexisting subdivisions.

Section 12. Delegation of department review to local government. This lengthy section delegates health review of subdivisions (a) containing parcels ten acres or larger in size when each parcel contains individual water and sewage facilities, and (b) containing five or fewer parcels when each contains individual water and sewage facilities. Local governments must have the personnel and expertise to review these subdivisions. The Department still prescribes standards for review by the local government.

Subsection (2) provides for notification of the DHES by the governing body when a subdivision otherwise eligible for local review includes more than nine parcels. If the DHES determines that the subdivision may require the preparation of a preliminary environmental review or an environmental impact statement under MEPA, the Department instead of the local government must review the subdivision.

When a local government exercises review authority granted in this bill, it may choose to make the final decision on the proposed subdivision and shall accept legal responsibility for that decision. Under these conditions, the local government receives all the fees collected under the act.

The local government may also choose to act in an advisory capacity to the Department, in which case it receives $10 of the $25 fee. The Department must make a final decision within 10 days after receiving the recommendation of the local government.

Rural Building Codes

In relatively minor action, the Subcommittee attempted to clarify some confusion regarding authority of counties to adopt and enforce building codes.

SB 401, enacted as Chapter 504 in 1977, extended authority to counties in Section 50-60-301, MCA, to adopt and enforce county building codes. Cities and counties are not required to adopt building codes, and when they do not, the state building code applies in that jurisdictional area. Cities and towns are given authority in Section 50-60-102 to adopt and enforce building codes within their city limits and (a) all or part of the area within 4 1/2 miles of the corporate limits of a municipality; (b) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a municipality; and (c) all of any zoning district adopted pursuant to Title 16, chapter 41 or 47, which is partially within 4 1/2 miles of the corporate limits of a municipality. Local building codes must be approved by the Department of Administration.

Although counties now have the power to adopt building codes covering all buildings, Department of Administration officials fear that by oversight an important section relating to application of the building codes was not amended to reflect the counties' new authority. Section 50-60-102 states that "outside municipalities and their jurisdictional areas... this chapter applies to 'public places' as defined in 50-60-101(9)." The Department of Administration has interpreted "public places" to include most anything but single-family dwellings. Thus, it appears that a conflict exists regarding counties' authority to issue building permits for single-family dwellings. It seems clear that the legislature intended that counties be granted this power, but in several places in the building codes chapter, code sections were not amended to reflect the 1977 change in Section 50-60-301.

To clarify this situation, the Subcommittee proposes adoption of LC 0057 (Appendix N), which conforms other building code statutes to the previously enacted authority for counties to adopt building codes. Although the bill is relatively long, it simply adds "clean-up amendments" to existing law.

In recommending this bill for passage to the Legislature, the Subcommittee hopes to facilitate the following benefits:

(a) Local governments would be able to regulate the quality of construction in their jurisdictions in order to prevent health and safety hazards from developing.

(b) People buying homes in rural areas could be assured of relatively sound and safe homes.

(c) Local governments would be aware of all construction occurring within their jurisdictions.

The Montana Environmental Policy Act and Subdivisions

Throughout its deliberations, the Subcommittee heard testimony from developers, citizens, and public officials concerning frustrations with implementation of the Montana Environmental Policy Act (MEPA) with regard to subdivisions. Essentially, under the provisions of MEPA, the Department of Health and Environmental Sciences must spend considerable time and money to prepare an environmental impact statement (EIS) for major subdivisions. This process delays approval for the developer and uses valuable DHES staff resources, causing delays in approval of other subdivisions. The irony of this situation is that both state and local officials are prevented by a recent Supreme Court decision (Beaver Creek South) and by time constraints in the Subdivision and Platting Act from using any of the substantial amount of information in the EIS to make a decision on the subdivision. DHES considers that it has authority only to approve or deny a subdivision on the basis of sewage, water supply, and solid waste criteria. Thus, a monumental waste of time and money occurs when an EIS is prepared but cannot be used to make a substantive decision on a subdivision.

The Subcommittee heard considerable testimony from attorneys involved in the process and developers and DHES officials burdened by the constraints of the statutes and the Court. Appendices R and S provide an excellent detailed account of the problem from two attorneys involved in implementation of MEPA.

The Subcommittee, while it felt that something should be done to resolve this conflict, could not agree on legislation

to accomplish this goal. Subcommittee members considered LC 0086 (Appendix Q) that would allow local governments to benefit from using an EIS on a subdivision. Under the bill, if the DHES determines possible detrimental effects of the subdivision in the EIS that the local governing body overlooked, local officials may go back and use the EIS to modify the conditions of their approval. The Subcommittee rejected this proposal, however, as insufficient to address the problem of time delays.

The Subcommittee did adopt a recommendation to call attention of the Legislature to the problems of MEPA and subdivisions. Unfortunately, the Legislature has grappled with these conflicts in past sessions with little success.

While the Subcommittee recommends adoption of the approved legislation described in this chapter, it recognizes that the Legislature as a whole may be unwilling to respond favorably to all these proposals. If the Legislature does not agree that these bills will substantially alleviate problems with subdivision laws, then the Subcommittee recommends continuation of a similar study committee during the next interim to try different approaches to solving these problems.

The final chapter of this report briefly reviews the progress of the Subcommittee and offers some conclusions on the study.

V. SUBCOMMITTEE DELIBERATIONS - CONCLUSIONS

The Subcommittee on Subdivision Laws met eight times throughout the 1977-1978 interim, including the two public hearings held in Billings and Missoula. The scope of the Subcommittee's deliberations encompassed a review of background material on Montana's land use laws; a determination of problems experienced by developers, officials, and other citizens; and the development of legislation and other recommendations as a response to those problems.[16] During the entire course of its study, the Subcommittee actively sought and received the advice and assistance of developers, realtors, state and local officials, and other interested organizations and citizens.

At its first meeting in June 1977, the Subcommittee adopted goals to be accomplished by subdivision regulation in Montana. These standards by which the Subcommittee attempted to measure current laws and any revisions to them include:

-- Is the subdivision the highest and best use of the land?

-- Does it achieve minimum direct and indirect costs for services?

-- Is there "buck passing" between local and state governments regarding subdivision regulation?

-- Does the subdivision encourage orderly growth in land development?

-- Does the subdivision pass on a minimum number of problems to future generations?

-- Is the subdivision the highest and best standard of housing without jeopardizing public health and resources?

-- Are there consistent standards for subdivision so that regulations are not constantly changing?

At this first meeting, the Subcommittee also established the scope of the study and approved a work plan for conducting it. Initial public comments were received from those people in attendance.

The Subcommittee met once again in September 1977 before the two public hearings in October and November 1977. The September meeting consisted of gathering preliminary background information to familiarize the members with the issues that would arise from the hearings. At the hearings,

the public responded overwhelmingly to this opportunity to contribute to the study through the submission of both verbal and written testimony. Many of the comments received during the hearings concerned problems with the Subdivision and Platting Act and its administration, including the 20-acre limitation, abuse of exemptions, dedication of parkland, and review of minor subdivisions. Other areas of concern were the Sanitation in Subdivisions Act and administration of health standards, urban v. rural subdivisions, financing of services for subdivisions, and energy considerations in subdivision review. Development of agricultural land, zoning, administrative rules and administrators in general, as well as other miscellaneous items also elicited comments from hearing participants.

In response to the information received at the hearings, the Subcommittee spent its next two meetings reviewing research on questions that had surfaced at the hearings. These issues included housing costs and government regulation, preservation v. development of agricultural lands, provision of services to subdivisions, the Montana Environmental Policy Act as it relates to subdivisions, and other considerations to be accounted for in subdivision review. During these spring meetings in 1978, the Subcommittee began to reach tentative decisions on which areas to concentrate their efforts.

In June 1978 the Subcommittee heard additional testimony from a group of western Montana freeholders who submitted requests for substantial changes in zoning laws and the zoning process. While many of the members felt these proposals had merit, they also felt constrained by the lateness at which these requests entered the study. Concentrating on preliminary draft legislation prepared for this meeting, the Subcommittee began the process of arriving at its recommendations. Again, public comment was sought -- this time on the draft legislation.

After receiving some public response to the draft legislation, the Subcommittee met for a final time September 18 and 19, 1978, to adopt legislation and other recommendations to be sent to the 1979 Legislature. The Subcommittee adopted all but three of the draft bills prepared. The approved bills (described in Chapter IV and printed in Appendices E through N) include:

(1) LC 0053 - a bill providing for the issuance of industrial development bonds for the financing of quality water supply and distribution services and sewage treatment and disposal services for residential or commercial subdivisions.

(2) LC 0054 - a bill authorizing counties to issue revenue bonds and refunding revenue bonds for the financing of services for subdivisions.

(3) LC 0057 - a bill clarifying the authority for counties to adopt and enforce building codes and the jurisdiction of those building codes.

(4) LC 0056 - a bill substantially revising the Sub-Division and Platting Act to redefine subdivision, modify exemptions, provide for summary review of certain subdivisions, provide for special review of multiple minor subdivisions, and specify requirements for master plans in certain cases.

(5) LC 0058 - a bill redefining and elaborating on the public interest criteria for review of subdivisions.

(6) LC 0059 - a bill revising the formula for determining park dedication requirements and allowing a portion of park fund to be used for maintenance of existing parks.

(7) LC 0060 - a bill allowing for the creation of Special Improvement Districts and Rural Improvement Districts for the development and maintenance of parks.

(8) LC 0063 - a bill amending the Sanitation in Subdivisions Act to provide for expanded local health review and additional enforcement authority.

(9) LC 0087 - a bill modifying the enforcement responsibilities of county and city attorneys and clerks and recorders with regard to filing of subdivision plats and certificates of survey.

(10) LC 0088 - a bill clarifying the exemption from survey requirements for divisions of land created by state highways.

The Subcommittee adopted these two additional recommendations to the 1979 Legislature:

(1) That the Legislature consider the problems of environmental impact statements for subdivisions, possibly requiring the Department of Health and Environmental Sciences to prepare environmental impact statements only at the request of local governments and make the Montana Environmental Policy Act useful in deciding subdivision issues but not a burden to the developer.

(2) That the Legislature approve the package of legislation enumerated above; however, if the Legislature rejects this legislation as being insufficient to solve subdivision-related problems, then the Subcommittee on Subdivision Laws or a similar body should be continued

in the next interim, with a possible purpose being the complete rewriting of Montana's subdivision laws.

In approving this legislation and adopting these recommendations, the Subcommittee hopes to have at least partially met the goals adopted at its first meeting. To be sure, the issue of subdivision regulation is one of extreme controversy, and few may be able to agree that these recommendations accomplish their intended purposes: to protect the public from poor subdivision developments and the problems they cause while facilitating quality projects and related services. When these recommendations are tested in the 1979 Legislature, a resolution of this question will be determined.

FOOTNOTES

1. Nelson Rosenbaum, Land Use and the Legislatures - The Politics of State Innovation, 1976, pp. 9-10.

2. Ibid. Rosenbaum cites many other examples of studies that demonstrated these conclusions, e.g., The States' Role in Land Resource Management - Technical Appendix (Council of State Governments, 1972) and Allen Manvel, Local Land and Building Regulation, National Commission on Urban Problems, Research Report No. 6, 1968.

3. John Delafons, Land Use Controls in the United States, M.I.T., 1962.

4. Rosenbaum, p. 11.

5. Ibid. p. 26.

6. Examples of recent important land use legislation in Montana include: The Major Facility Siting Act, the Strip Mine Siting Act, the Subdivision and Platting Act, the Sanitation in Subdivisions Act, the Natural Streambed and Land Preservation Act, the Lakeshore Protection Act, the Montana Economic Land Development Act, the "Greenbelt" Act, the Open-Space and Voluntary Conservation Easement Act, and the Natural Areas Act.

7. Citations are to Revised Codes of Montana, 1947. Section numbers and arrangement will be changed by the new Montana Code Annotated, to be issued in December 1978.

8. The summary of state land use laws on which the Subcommittee relied was prepared from the working papers for the Environmental Quality Council's Montana Environmental Index, published in January 1978. The Index in its present form is an excellent source of concise information on state land use (and other environment-related) laws.

9. Stephen R. Seidel, Housing Costs and Government Regulations: Confronting the Regulatory Maze, New Brunswick, New Jersey, 1978, p. 1.

10. Fred Bosselman, et al., The Permit Explosion, Coordination of the Proliferation. Urban Land Institute, Washington, D. C., 1976, p. ix.

11. Ibid. pp. v, vi.

12. Seidel, p. 308, 309. The first four recommendations are adopted from this study.

13. Bosselman, et al., pp. 3, 4, 5. The last four recommendations are adopted from this study.

14. Subcommittee on Agricultural Lands, Preservation of Agricultural Lands: Alternative Approaches, Helena, Montana, 1976, pp. 27-33. The material discussed in this report is still available in Legislative Council files for public use.

15. All legislation considered by the Subcommittee is drafted according to the recodified statutes in the Montana Code Annotated. The statutes have been reorganized, simplified, and clarified to facilitate their use.

16. For a full discussion of the issues of school impact from subdivisions, see minutes of the April 6, 1978 and June 30, 1978 meetings, i.e., testimony from Robert Stockton, Office of Public Instruction.

17. For a full account of what transpired at each of the Subcommittee meetings, the reader should consult the Subcommittee minutes and research materials on file with the Legislative Council.

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APPENDIX A

RESPONSES TO SUBDIVISION REVIEW SURVEY OF SELECTED WESTERN STATES

February, 1978

Question 1

Does your state have a stated policy expressing the goals to be accomplished by subdivision regulation?

1. Washington

". . . to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and school-grounds and other public requirements; to provide for proper ingress and egress; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description."

2. Oklahoma

"For the purpose of cooperating with the state of Oklahoma in conserving the natural resources of the state and promoting the health, safety, peace, morals, and general welfare of the people. . . ."

3. Texas

". . . to promote the health, safety, morals, or general welfare of the community and the safe, orderly and healthful development of said community. . . ."

4. Kansas

"Such regulations may provide for the harmonious development of the community, including the proper location and width of streets, and for building lines, open spaces, safety and recreational facilities, flood protection and floodplain regulations and for the avoindance of congestion of population, including minimum width, depth and area of lots and compatibility of design. Such regulations may also provide in residential subdivisions for the reservation or dedication of land for open space for either public recreational use or for the future use of the residents of the residential subdivisions in order to insure the proper balance of use, design or urban areas and avoid the overcrowing of land. . . .

"Such regulations may also as a condition to the approval of any plat require and fix the extent to which and the manner in which streets shall be improved and water, sewer, drainage and other utility mains and piping or connections or other physical improvements shall be installed."

5. Oregon

". . . development of new subdivisions and the promotion of sales and leases of such property are now largely uncontrolled and

unregulated in this state and . . . a need exists to protect the public from fraud, deceit, and misrepresentation."

6. South Dakota

". . . such regulations may provide for the harmonious development of the municipality and its environs; for the co-ordination of streets within subdivisions with other existing or planned streets or with other features of the comprehensive plan of the municipality; for adequate open spaces for traffic, recreation, light and air; and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity. Before an adoption of its subdivision regulations or any amendment thereof, a public hearing thereon shall be held by the council."

7. Alaska

No state policy; implementing local ordinances typically do expressly state goals.

8. Nevada

"Goals related to subdivision regulation have not been expressly stated within the statutes. Nevada Revised Statutes (NRS) 278.020 refers to 'the purpose of promoting health, safety, morals, or the general welfare of the community' and empowers governing bodies of cities and counties generally 'to regulate and restrict the improvement of land and to control the location and soundness of structures'."

9. Iowa

No state level review process of subdivisions in unincorporated areas. Local subdivision review is primarily for technical platting purposes, although subdivision must conform to comprehensive plan where one exists.

10. Wisconsin

". . . to regulate the subdivision of land to promote public health, safety and general welfare; to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage and other public requirements; to provide for proper ingress and egress; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider as required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes."

11. Missouri

Missouri does not regulate subdivisions; the state has no state building code or statewide zoning code. Cities and some counties may have planning and zoning, and state law usually requires plats of subdivisions to be recorded in the county recorder of deeds office, but the state does not regulate this.

12. New Mexico

New Mexico does not have any stated policy that expresses the goals to be accomplished by subdivision regulations and has, by the enactment in 1973 of the New Mexico Subdivision Act, placed its regulation under the various boards of county commissioners. This law sets minimum requirements for subdivision regulations to be adopted by the counties and does not apply to municipalities within their extraterritorial subdivision and platting jurisdiction as set forth in Section 14-19-5 NMSA 1953. [I enclosed copies of Section 14-19-5 NMSA 1953, the New Mexico Subdivision Act, and a memorandum explaining its provisions, and the Land Subdivision Act of 1963 that regulates subdivisions of twenty-five or more parcels not regulated by municipalities or subject to the provisions of the New Mexico Subdivision Act.]

13. North Dakota

In North Dakota subdivision regulation is the responsibility of counties or cities. Counties have subdivision regulation jurisdiction over areas not within the subdivision regulation authority of cities. Cities have subdivision regulation authority within their corporate limits and from one-half to two miles outside their corporate limits, depending upon population of the particular city. County subdivision regulation authority arises from authority to zone the use of land and North Dakota Century Code Section 11-33-03 lists the statutory purposes for the object of zoning regulations on the county level. North Dakota Century Code Section 40-48-09 requires surveys and studies to be made for preparing a municipal (city) master plan, and Section 40-48-20 establishes the statutory requirements that a municipal (city) planning commission shall consider in adopting general regulations governing the subdivision of land.

Subdivision regulations must be in accordance with the comprehensive plan and serve the following goals:

1. To protect and guide the development of nonurban areas.

2. To secure safety from fire, flood, and other dangers.

3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other

open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

4. To lessen governmental expenditures.

5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration among other things, to the character of the district and its peculiar suitability for particular uses.

14. Idaho

Policy relating to subdivision regulations is limited to the "purpose" section of the Idaho Code, title 67, chapter 65. It is very general and refers to the entire act, not just subdivisions. Chapter 65 requires local governments to provide standards and an application process for subdivision permits. (Policy refers to general police power or to preserve health, safety, welfare, etc.)

15. Wyoming

No state regulations -- authority delegated to cities and counties. No purpose section of Subdivision Act.

16. California

No specific statutorily-stated policy.

Question 2

Is there an acreage limitation on subdivisions which come under review in your state? If there is, have you experienced a burst of development of subdivisions of a size to avoid the review process?

1. Washington

Unless a local ordinance specifies otherwise, subdivisions in which all lots exceed 5 acres or one-one hundred twenty-eighth of a section of land are exempted from regulation. There is no limit to the minimum lot size which can be regulated. The majority of jurisdictions leave the limits at five acres, about one-third have adopted a twenty-acre limit and two regulate every lot under 50 acres.

2. Oklahoma

State does not exercise any control in this area. Authority rests with each planning commission. Each has authority to adopt regulations carrying out the purposes of the statute.

3. Texas

None.

4. Kansas

State law does not define what a subdivision is; this is done locally. Subdivision regulations are tied to adoption of a comprehensive plan.

5. Oregon

Parcels of land 160 acres or over are exempt from review.

6. South Dakota

Any division containing two or more lots must be reviewed.

7. Alaska

No acreage limitation. Subdivision defined as follows:

> "(16) "subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale or building development, includes resubdivision, and, when appropriate to the context, relates to the process of subdividing or to the land or area subdivided;"

Under AS 40.15.010 all subdivision must be recorded and the recorder may not accept a subdivision or dedication for filing unless it shows the approval of the platting authority. However, this section contains an exception which provides:

> "If no platting authority exists...lands may be sold without approval."

The net effect is that all subdivisions must be recorded but public review and approval is required only within local governments.

There is one apparent exception. The platting authority may waive preparation, submission for approval and recording of the plat under AS 29.33.170 which provides:

> Sec. 29.33.170. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that
>
> (1) each tract or parcel of land will have adequate access to a public highway or street;
> (2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of §29.33.150-29.33.240 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

This is, as you can see, a narrow exception and one in which a waiver does come before the platting authority in each instance.

8. Nevada

The definition of "subdivision" in Nevada allows the local government to decide whether a ten-acre or a 40-acre limitation will be utilized within their jurisdiction (see AB 475, Section 2). In the past, several rural counties have experienced rapid development of 40-acre+ land divisions without any maps, improvements, or access. NRS 278.323 was added to the statutes in 1975 in an effort to get a slight handle on these large land divisions. At the present time, the market does not show 40-acre+ divisions to be economically feasible, so very few are being attempted.

9. Iowa

". . . Any tract or parcel of forty acres or less or more than forty acres if divided into parcels any of which are less than forty acres subdivided into three or more parts. . . ." must be surveyed, platted, and reviewed.

10. Wisconsin

There is an acreage limitation on subdivisions requiring state-local review as contained in Section 236.02(8) (see below). Most counties have enacted subdivision control ordinances under s. 236.45 with more restrictive requirements. Reportedly, any parcel size which is cited does not prevent evasion of the law or ordinance, since subdividers simply make slightly larger parcels.

A subdivision is defined as follows:

"Subdivision" is a division of a lot, parcel or tract of land by the owner thereof or his agent for the purpose of sale or of building development, where:

(a) The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area; or

(b) Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.

11. Missouri

No.

12. New Mexico

Acreage limitations are within the control of the local governmental unit having jurisdiction.

13. North Dakota

State law establishes no acreage limitation on subdivisions which come under review. Review of subdivisions is conducted on a local (county or city) level in North Dakota. The particular city or county regulation may provide for exemptions to local subdivision approval requirements; however, this is on a local basis.

14. Idaho

Like Montana's 20-acre parcel exemption, Idaho has a five-acre exemption. It is for bona fide agricultural uses and must be maintained as agricultural land (I.C. 50-1301). Idaho Code also requires local government to define "agricultural land" (I.C. 67-6529).

Idaho has experienced some abuse of the exemption rule, but certainly no "burst of development" to circumvent the law has occurred.

15. Wyoming

Subdivision defined as division of unit of land into 3 or more parcels of under 35 acres. Agricultural subdivisions are exempt from review.

16. California

All subdivisions of whatever size are subject to approval by cities and counties.

Question 3

What percent of subdivisions come under the review process in your state?

1. Washington

Has not statistics and an estimate would have little to support it.

2. Oklahoma

No state review of subdivisions. No data available.

3. Texas

Technically, all do.

4. Kansas

No state review. No data available.

5. Oregon

No percentage figure that can be substantiated, but with a major and minor partitioning provision sna dour or more at the state level, the only land to escape would be illegal divisions.

6. South Dakota

No response.

7. Alaska

Uncommon for a subdivision of over a few lots to escape review.

8. Nevada

By law, all subdivisions (100%) come under the review process as outlined in the statutes. However, the definition of "subdivision" (AB 475, section 2, 33) allows for some "land divisions" which are completed without public review.

9. Iowa

No response.

10. Wisconsin

There has been no study made concerning state-wide divisions of land by platting or other methods. Wisconsin has a certified survey map law contained in Section 236.34 that allows four small parcels to be shown on a single certified survey map without following the platting process, creation of a fifth parcel does require platting. It is also possible to create metes and bounds parcels, however, each of these methods are limited to the four parcel definition contained in Section 236.02(8). A University of Wisconsin study of the capitol city, County of Dane are (population approximately 301,000) indicated that approximately 50 percent of the lots were created by land subdivision plats, with the remaining 50 percent being created by metes and bounds or certified survey map parcels. In 1976 this office finalized 925 state-wide plat reviews certifying 17,109 lots having 10,259 acres included in those lots.

11. Missouri

None are reviewed by the state. No other information on this question available.

12. New Mexico

No statistics are available to enable computation of the percentage of subdivisions that come under a review process in New Mexico due to the various governmental entities which have jurisdiction and since the majority of the subdivisions are of a size that exempts them from regulation.

13. North Dakota

No statistics are available concerning the percentage of subdivisions coming under the review process in North Dakota. Subdivision regulation is accomplished by cities and counties, regardless of acreage of the subdivision. Very few subdivisions would be exempted from local regulation. The probable exemption is the 2-3 lot development. This type of exemption probably amounts to less than one percent of subdivisions in North Dakota.

14. Idaho

We have no statistics that reveal a percentage of subdivisions excaping the review processes set up by local ordinances and Idaho Code. As in Montana, public review consists of submitting subdivision plats to planning and zoning commissions and then to the local elected officials. It is highly unlikely that many subdivisions in Idaho are platted without public review. When a local government chooses not to appoint a planning and zoning commission it must exercise the powers of the commission. Therefore, "public review" does occur in this situation as well.

15. Wyoming

No statistics available.

16. California

All subdivisions of whatever size are subject to approval by cities and counties.

Question 4

Has your state experienced problems with delays in approval for developers' plans to subdivide? If not, what methods have you used to expedite the process?

1. Washington

There have been no recent major complaints. Financing, environmental review and a host of related permits (water, access, sewer, shoreline, etc., etc.) make a greater burden on the plattor. The question of adequate information for review of subdivision plats should be addressed in the text of each local platting regulation. Review should not begin unless all the required information has been supplied. Chapter 58.17 does include time limits for action.

2. Oklahoma

Each local unit of government establishes its own review process. The charges made by developers of delaying tactics employed by officials in plat approval are typical in many municipal governments that seriously administer subdivision regulations.

Oklahoma statutes prescribe time limits within which local governments must act. If no action is taken within the time limitation, approval is automatically granted unless an extension is agreed to by the applicant. The time period is generally 45 days; however, it may run as long as 90 days.

3. Texas

None; no special methods utilized to expedite the process.

4. Kansas

No information submitted -- no response.

5. Oregon

"We have an ongoing educational process for developers and most of them now know that the primary cause of delays is an incomplete filing. A complete filing often goes out the same day it is submitted."

6. South Dakota

No response.

7. Alaska

There have been situations in which problems with delay in approvals have arisen because of special circumstances. As an example, in one of our boroughs development in 1969 - 1970 was much more rapid than anticipated and the planning staff of the borough was not large enough to handle the workload. As a general rule, developers work with the review and approval process submitting and discussing preliminary designs with the planning staff. Some of the municipalities require this by ordinance. Further, our platting statute sets out a time requirement for action. AS 29.33.160(a) provides:

"(a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat."

This has apparently been satisfactory. At least no attempt has been made to amend this section.

8. Nevada

Nevada has experienced some problem with the time-consuming nature of the subdivision review process. Any action that is as economically sensitive as land development can be expected to experience some turmoil of this type. The committee which studied the review process had several "truly reputable land developers, real estate people, and consultants" who realized the reasons for the time-consuming reviews. On the other hand, the time frames were cut down as much as possible at the recommendation of this committee.

9. Iowa

No response.

10. Wisconsin

Wisconsin's platting requirements have undoubtedly results in delays for developers' plans to subdivide. However, uniform administration at the state level reduces the advantages of one subdivider over another. Wisconsin's system has clearly demonstrated that when a land subdivision plat has been approved and recorded the subdivider may improve the streets, transfer the lands, move to other projects without further and future difficulties arising from poor surveys, misunderstanding between local officials as to the installation of utilities and streets and so forth. It should be noted that the procedure for the approval of plats contained in Section 236.12 specifies a 20 day review period for state agencies which run concurrently. Section 236.11(2) limits the approving authority to 60 days. Any other expenditures of time are involved with the professionals preparing the field survey and the document, the preliminary plat process is optional but when used an additional 60 days can be involved.

11. Missouri

No.

12. New Mexico

No direct knowledge of problems with delays in the approval of developers' plans to subdivide as it is a local matter, although in Section 70-5-22 NMSA 1953, the New Mexico Subdivision Act has placed a time limit on administrative action and requires county commissions to grant approval to subdividers who have submitted a plat and the commission has failed to act. Approval is automatic thirty days after the subdivider has given the attorney general written notice of a board's failure to act.

13. North Dakota

To our knowledge, no substantial problems have occurred in North Dakota with respect to delays in approval of developers' plans to subdivide. North Dakota Century Code Sections 11-33-08 through 11-33-10 provide for hearings and publication of resolutions prior to final action by the county. North Dakota Century Code Sections 40-48-10 through 40-48-12 provide for hearings on adoption of municipal master plans, and Sections 40-48-21 and 40-48-22 provide for hearings by municipal planning commissions before approving subdivision plats.

14. Idaho

Developers have experienced problems with delays in approval. In some instances these delays have been due to cumbersome requirements. In other instances developers have presented planning and zoning commissions with incomplete information, because they didn't bother to read the local ordinance. Some of the developer complaints result from local governments having no full-time staff to assist the developers before they present their application to the planning and zoning commissions. No group appears to be entirely blameless.

15. Wyoming

No response.

16. California

No information available due to local nature of review.

Question 5

Are rural subdivisions a significant problem in your state? What measures have been taken to encourage development in urban areas instead?

1. Washington

So long as rural lands are prized as a place to escape from urban areas and in addition, offer such a handsome return for those who

buy and sell land for income purposes, there will be rural subdivisions. This is a serious problem, first because productive land is almost immediately abandoned to no use at all and second because the isolated few who do choose to live on their rural lot are expensive to serve with utilities, etc. Washington has an "open space" law, also. In addition we have a "Land Registration Act" which is designed to insure that purchasers are informed of what they are getting when they buy a lot. There is talk about "transferable development rights" and other innovations but little has been done with them.

2. Oklahoma

To date, rural subdivisions have not presented a significant enough problem to cause concern or action by state government. However, a few problems are beginning to occur:

1. Subdivisions beyond corporate limits overburden services;

2. Some cities have annexed beyond their immediate needs in order to control development;

3. Scattered rural subdivisions are created as a result of rural utilities systems being made available; however, other services are not provided nor is there a government entity adequate to deal with the problems.

3. Texas

Yes, they are a problem but no special measures have been taken to encourage urban development.

4. Kansas

No response.

5. Oregon

The Land Conservation and Development Commission has set goals in statewide land planning which it is requiring all counties to implement by 1980. Some exceptions are made, but the program is well down the road.

6. South Dakota

No response.

7. Alaska

Rural subdivisions are not a significant problem.

8. Nevada

Subdivisions located away from community centers have constituted a problem in Nevada. In urban counties, some valuable agricultural and open space lands have been developed for urban use. In more rural counties, development away from communities has resulted in costly services, etc. Nevada has a law that provides the opportunity for agricultural and open space tax deferrals.

9. Iowa

There has been a problem with rural subdivisions; some counties are discouraging them by establishing forty-acre minimum lot requirements through zoning ordinances.

10. Wisconsin

(The respondent indicated that rural subdivisions are a problem in Wisconsin but did not feel qualified to elaborate.)

11. Missouri

No.

12. New Mexico

Most of the large subdivisions are in rural areas and problems have arisen relating to interstate sales, water resources and failure to finish required improvements. The only encouragement that the state has given to development in urban areas is that they are subject to local regulation which may be less than the requirements of the New Mexico Subdivision Act.

13. North Dakota

Rural subdivisions are becoming a problem around larger cities in North Dakota. There has been little legislative action to encourage development in urban areas instead of in rural subdivisions. The 1973 Legislative Session amended North Dakota Century Code Section 57-02-27, relating to the assessment of property for taxation purposes. The amendment provided that agricultural lands within the corporate limits of a city shall constitute agricultural property and be so classified and valued for ad valorem property tax purposes until such lands are put to another use. The purported purpose of the amendment in 1973 was to encourage the annexation of agricultural lands close to a city's corporate limits, so that some control could be placed over the development of the land the property owner would not be subject to increased taxation until the use of the land changed from agricultural to some other use.

14. Idaho

Many in the state are concerned with rural subdivisions and consider them a significant problem. Development in urban areas as opposed to rural areas is not the entire question in Idaho. Idaho is growing and some rural lands will of necessity be developed. The question then is not "if", but "where", "when", and "how". Answers to these questions are intended to be derived through the planning process as provided for in chapter 65, Idaho Code.

15. Wyoming

No response.

16. California

No response -- (seem to have missed the question).

Question 6

Have you any reliable statistics supporting or disproving that the subdivision review process substantially increases costs for the home buyer in your state?

1. Washington

No reliable statistics, but lots of talk.

2. Oklahoma

No information available.

3. Texas

It is doubtful that the review process increases costs.

4. Kansas

Information not supplied -- no response.

5. Oregon

No study conducted, but believe it to be insignificant. However, planning and zoning do have substantial impact on land costs by specifying and limiting areas that can be used.

6. South Dakota

No response.

7. Alaska

No reliable statistics on whether subdivision review increases cost to home buyers. It is generally believed that over the long run this process substantially decreases costs in that it reduces the incidence of things such as improper drainage or road grades which can be done correctly at little or no added cost but which can be very expensive to re-do correctly once installed.

8. Nevada

No reliable statistics.

9. Iowa

No response.

10. Wisconsin

No statistics available.

11. Missouri

Unknown.

12. New Mexico

No statistics are available supporting or disproving that the review process substantially increases the costs of home buyers in New Mexico, although it is obvious that the requirements of the enclosed acts would lead to increased costs of development and a subsequent increase in the cost of the lot. This, of course, is offset by the consumer protection aspects of the regulation and the increased value of the lot due to the improvements required of the developer.

13. North Dakota

No statistics available.

14. Idaho

We have nothing that supports or disproves that subdivision review increases costs for the home buyer. Certainly some cost does result from the time taken to review a plat. Increased costs also result from increasing labor and material costs, and of course inflation. The issues you identify are present in Idaho as well. Idaho encourages local governments to develop reasonable processes that will allow them to ensure the citizens will not be taken advantage of by slip-shod development, but not unduly hinder responsible development.

15. Wyoming

No response.

16. California

No reliable statistics available.

ADDITIONAL COMMENTS

1. Washington

a. Montana and Washington have similar problems with subdivision review.

b. Washington has provided for a hearing examiner to act upon plats and other matters traditionally considered by planning commissions.

c. Washington had a serious problem with most developments escaping review.

A major effort to discourage this non-compliance resulted several years ago in their "Short plat" provisions. It authorizes a simpler procedure for division of land into four or less parcels. An important part of "short plat" regulations requires a full subdivision for any replatting in the five years following approval of a short plat. This somewhat discourages platting of large areas by a series of short plats.

2. Wisconsin

A. Wisconsin's platting law divides reviewing agencies into those having approval authority under Section 236.10 and those having the authority to object under Section 236.12. The approving agencies are not allowed to approve nor inscribe approvals on the final plat until such time as those agencies having the authority to object have certified no objection [see s. 236.12(3)]. The purpose being that the objecting authorities (state agencies) perform technical review of the documents using small staffs of full-time specially trained personnel, thereby assuring uniform administration of the technical requirements and freeing local approving authorities from concern for these matters. Three state agencies have subdivision review authority, they are:

--The Department of Local Affairs and Development, which has responsibility for state level clearinghouse function, layout requirements, monumentation, the proper showing and accuracy of data and certain certificates on the plat. These are identified in Sections 236.12, 236.15, 236.16, 236.20 and 236.21, Wis. Stats.

--The Division of Health, Department of Health and Social Services, for unsewered subdivisions said agency determines the capability of the soil to absorb sewage effluent based on soil boring and percolation tests. These are contained in the Wisconsin Administrative Code identified as H65.

--The Division of Highways, Department of Transportation, which has enacted Hy33, Wisconsin Administrative Code, relating to the safety of entrance upon or departure from abutting state trunk highways, connecting streets and protecting the public investment in such highways.

Chapter 236 was revised in 1957 and has remained substantially in its present form since that time. A proposed revision is being prepared for introduction in the current session of the legislature.

B. The states of Minnesota and Michigan have enacted subdivision laws based on Wisconsin's platting laws and the State of Idaho has expressed an interest similar to yours.

C. Wisconsin is presently debating in its legislature the passage of a restrictive law related to the regulation of subdivision land sales by the Office of the Commissioner of Securities.

3. Wyoming

The only real problems with subdivisions in Wyoming have resulted in very recent years from population explosions in certain areas involved in energy production. The lack of housing within the zoned and regulated areas of cities caused trailer camps and miscellaneous housing developments to spring up in the unincorporated and unregulated areas of the counties. Although counties have had zoning authority for many years, the authority had been used sparingly if at all. Consequently, counties were not prepared to cope with the sudden "subdivision" boom that occurred in some areas. To lend additional support to counties, the subdivision law was enacted in 1975. Since the law has not been amended in either of the two session since its enactment, it is assumed it is proving to be reasonably effective and workable.

SUBDIVISION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

APPENDIX B

Bill Number	Sponsor	Problem Addressed	Solution Proposed	Disposition
1973				
SB 473	Hazelbaker	Minor phraseology and recodification deficiencies need correction.	Executive reorganization.	Enacted
SB 394	Boylan	Park dedication is burdensome on some subdivisions of irregularly shaped tracts of less than 10 acres.	Waive park dedication and in lieu cash payments for such subdivisions.	Killed
SB 173	McKeon	Fraudulent and misleading land sales practices are being conducted on some subdivisions.	Require registration of lands of less than 35 acres proposed to be subdivided into tracts of 5 or more lots.	Killed
SB 268	Flynn	Local government zoning authorities sometimes exercise unreasonably restrictive measures to promote or retard economic interests of people in the community.	Establish a state board of land use review that acts as an appeal board for aggrieved landowners.	Killed
SB 267	James	Communities try to unreasonably restrict certain kinds of housing, such as mobile homes.	Restrict communities from adopting ordinances which discriminate in forms of housing allowable.	Killed
SB 269	Turnage	Same as above.	Require communities to include in their master plans studies of available types of housing, including mobile home sites and trailer parks.	Enacted; as amended made inclusion of these studies permissive.
HB 465	Baucus	Land is being subdivided and homes constructed without regard to insuring health through good water quality; septic systems and other solid waste disposal systems are inadequate in some subdivisions.	Require developers to file plats with DHES for approval of water supply and refuse disposal system and lifting of sanitary restrictions.	Enacted; chapter 509

SUBDIVISION BILLS INTRODUCED IN PAST
LEGISLATIVE SESSIONS

Bill Number	Sponsor	Problem Addressed	Solution Proposed	Disposition
HB 341	Shelden)	1895 law is generally inadequate to handle increased subdivision activity; local governments are not adopting regulations sufficient to insure quality development.	Adopt new Environmental Planning Subdivision Act to require use of natural resource data in subdivision planning and require developer to assume costs of development.	Killed
SB 208	Turnage)		Adopt new subdivision and platting act requiring communities to adopt and enforce adequate subdivision regulations; provide adequate and uniform recording and survey standards.	Enacted - incorporating some of HB 341 (Ch. 500)
1974				
SB 634	McNamer	$10,000 bond for each occurrence of loss or damage to purchaser of subdivided lands outside the state is inadequate.	Increase minimum bond to $50,000.	Enacted; Chapter 110
SB 617	Darrow	10-acre limitation in Subdivision and Platting Act and Sanitation in Subdivisions Act is allowing many subdivisions to escape review; cash in lieu of park dedication should be based on full value of land after subdivision; subdivisions are often approved even if they don't benefit the community.	Increase acreage limitation to 40 acres; require full market value in lieu donations for parks; require a finding by the local government that a subdivision is in the net public interest.	Killed
HB 875	Huennekens	Rural subdivisions constitute a threat to the agricultural base in Montana; planning for subdivisions is fragmented; tax base is threatened.	Impose temporary moratorium on rural subdivisions until long range land use goals, a statewide land and water resources inventory, and critical areas legislation are adopted.	Killed

SUBDIVISION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

Bill Number	Sponsor	Problem Addressed	Solution Proposed	Disposition
HB 424	Shelden	Counties are not adequately reviewing and planning for increased rural development.	Require formation of county planning boards and set a mill ceiling on funding their operation.	Killed
HB 1046	Baucus	DHES is not adequately funded to enforce new sanitation in subdivisions restrictions..	Appropriate $56,540 for that purpose.	Killed
HB 1016	Shelden	10-acre limitation allows too many rural subdivisions to escape review.	Increase acreage limitation to 40 acres.	Killed
HB 1037	Seifert	Subdivision and Platting Act is too restrictive and too broad in purpose; examining land surveyor is unnecessary; definition of subdivision is too broad; monumentation and forms of survey standards are inadequate; exemptions are too restrictive; Dept. [of Comm. Affairs] powers too broad; bonding requirements too restrictive.	Broadly revise act to eliminate examining land surveyor; prescribe by law monumentation and survey requirements; increase exemptions; make Dept. powers advisory only; eliminate bonding requirements; and generally narrow the scope of the act.	Killed
HB 1017	Shelden	Subdivision and Platting Act needs general revision to expedite small subdivisions; modify park requirement in divisions of large tracts; expedite subdivisions conforming to master plans; average limitation is too low; review period is occasionally too short; and other minor problems.	Revise Subdivision and Platting Act of 1973; redefine subdivision as creation of parcels of which one contains less than 20 acres; revise requirements for surveys; permit exemptions for occasional sales and for subdivisions conforming to local planning board master plans; revise summary approval standards for 5 or fewer parcels; not require park and playground dedication where no parcel is less than 10 acres; permit waiver of dedication or cash donation requirement where subdivider provides common open space for use of subdivision residents; delete title abstract or insurance requirements for land dedicated to public use; permit extensions of 60-day review period.	Enacted; Chapter 354

SUBDIVISION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

Bill Number	Sponsor	Problem Addressed	Solution Proposed	Disposition
HB 1017 (Cont.)			require mailing notice of hearing on preliminary plat to subdivider and adjoining landowners; confirm certain previously executed deeds and contracts.	
1975				
HB 369	Meloy	Many subdivisions are not being reviewed by DHES because of acreage limitation.	Eliminate acreage limitation.	Killed
SB 227	Roberts	DHES subdivision requirements do not conform in acreage limitation; DHES has inadequate funding to enforce the act; language is unclear as to when sanitary restriction is lifted.	Redefine subdivision to include only parcels of less than 20 acres; require approval of plans for all applicable subdivisions regardless of whether they come under review of Title 11, Chapter 38; require the payment of fees for review of plats.	Enacted; Chapter 529
SB 49	Lynch	Fraudulent or misleading land sales practices occur within the state as well as without.	Apply Foreign Land Sales Practices Act to Montana as well. Require registration of all subdivisions before disposition.	Killed
SB 313	Brown	Subdivisions are difficult to trace or research in county offices.	Require county clerks to record and index information on subdivisions.	Enacted; Chapter 199
HB 628	Kemmis	Subdivisions sometimes place a burden on local school systems and don't compensate communities for added school costs.	Allow communities to include in their subdivision regulations provisions concerning the reservation of sites and land areas and the dedication of these areas for schools; allow the school district to recommend action to be taken regarding such reservations.	Killed

SUBDIVISION BILLS INTRODUCED IN PAST LEGISLATIVE SESSIONS

Bill Number	Sponsor	Problem Addressed	Solution Proposed	Disposition
HB 666	Vincent	Subdivisions are being approved that may not be of net benefit to communities; developers are neglecting to compensate communities for costs of services created by subdivisions; occasional sale provision is abused; citizens do not have sufficient opportunity to seek review of subdivisions.	Require approval of subdivisions only if local government bodies find after evaluating the subdivisions that nine criteria qualifying it as a net public benefit are met; expand citizen review; require developer to guarantee services; eliminate occasional sales.	Enacted; Chapter 498 - only net public benefit provisions retained in final version
HB 187	Jack Moore	Costs of administering Foreign Land Sales Practices Act are excessive in some cases.	Allow board of real estate to charge more than $500 to defray expenses of enforcement if costs warrant it.	Killed
HB 652	Kemmis	Same as HB 666; and acreage limitation allows abuse of act as subdivisions escape review.	Require that developer assume costs of services required by subdivision; eliminate acreage limitation; eliminate occasional sale; require in lieu cash donations for park dedication to reflect the value of the subdivided land.	Killed
SB 270	Towe	Some survey requirements in Subdivision and Platting Act are burdensome when regular rectangular lots are divided; some abuse has occurred when division of existing certificates or survey divide the lot into an area less than required by state law when the original plat was filed.	Delete survey requirements for division of previous plat resulting in regular rectangular lots; require amendment to original certificate of survey or subdivision plat when division results in tracts less than that required by law at the filing of the original plat.	Killed
SB 101	Colberg	Exemption from Subdivision and Platting Act for covenants of divisions of land for agricultural purposes is not strictly defined, resulting in abuses.	Tie agricultural definition to Greenbelt Act.	Killed
HB 74	Staigmiller	Rural subdivisions are often left unprotected from fire or counties pick up the burden without compensation.	Create a new class of land: subdivided lands; and tax them for fire protection.	Killed

APPENDIX B (Continued)

STATUS OF SUBDIVISION BILLS - 1977

SB 110 - Dover - Encourages development in harmony with the natural environment and repeals the requirement that subdivisions be in the public interest. House killed on second reading 3/11/77.

SB 195 - Flynn - Requires park and playground dedication only when density demands. Died in Conference Committee 4/19/77.

SB 224 - Story - Allows a simplified procedure for subdivisions within a master plan area. Governor signed 5/11/77 (Ch. 552).

SB 225 - Story - Allows offers and contracts before a final subdivision plat is filed of record. Governor signed 5/11/77 (Ch. 553).

SB 226 - Story - Shortens the time for processing petitions for removal of sanitary restrictions. Governor signed 5/11/77 (Ch. 554).

SB 227 - Story - Relates to the imposition of conditions after approval of a preliminary plat. Governor signed 5/11/77 (Ch. 555).

SB 310 - Roberts - Gives the Department of Health the power to inspect water supply and sewage disposal systems. Governor signed 5/11/77 (Ch. 557).

HB 543 - Bradley - Amends the Montana Subdivision and Platting Act. Killed on third reading 2/26/77.

HB 550 - Vincent - Provides that subdivided land may not be assessed as agricultural land. Killed on second reading 2/25/77.

HB 528 - Vincent - Provides that divisions of land within the corporate limits of a municipality are considered a subdivision. Killed on second reading 2/25/77.

HB 425 - Kimble - Reorganizes state programs for the encouragement of energy conservation and alternative energy development. Killed in Natural Resources 2/21/77.

HB 614 - Amends the Montana Subdivision and Platting Act by eliminating the position of examining land surveyor. Killed in Natural Resources 2/24/77. Sponsored by Pistoria.

SJR 43 - Dover - Requests a study of Montana's laws relating to subdivisions. President signed 4/18/77; Speaker signed 4/19/77.

APPENDIX C

Written Testimony - Subcte. on Subdivisn

Billings

rge Freeman
ilings - Yellowstone Planning Director
rbara McGregor
ings - Planning Board
mes Phelps
10 Bradbrook Ct. Billings 59102
mes R. Hughes ✓
. Bell - 560 N. Park, Helena
Joe Gerbase - Atty. for Bd.
Realtors - Billings
el Carne - DHES, Helena
al Cumin - Cumin Assoc.
illings
hn Orth - DNRC - Helena
ry Ditto, 775 Mill Rd. Helena
E.N. Wheeler, Surveyor
ichland County - Sidney

Missoula

(1) David Erickson
Lake Co. Planning Direct
(2) Joe DeLong
Mt. Farmers Union
Box 164 - Somers 59
(3) Merle D. Lloyd
Box 129, Hamilton 5
(7) Garrett B. Voerman
Lake Co. Health Dept.
(5) Chris Hunter, Director
Flathead Drainage 208 Proj
(6) J.D. Peters, Rte. 1 Box
Charlo, Mt. 59824
(4) C.E. Abramson, Securit
Agency, Inc. Realtors, Mss
Missoula Co. Bd. of Realto
(8) David Maclay, 828 Ronald A
Missoula 59801
(9) Wendy Lou Cromwell
star Rte. Polomac - Bonner 5
(10) Peggy Munoz, Hamilton
(11) Wes & Joann Woodgerd - Florence
(12) Henry Harrington, Florence 598
(13) Dr. A. Reid Marbut - Old Grant Creek
Missoula
(14) R.A. Ainsworth - Surveyors - Missou
(15) Clark Pinkerton - Lewis & Clark A
Helena, Mt.

Billings

Missoula

(16) Hugh G. Cumming - Co. Comm
Lavalli County

(17) John Westenberg - Missoula

(18) Charles K. Green, Coram, Mt
59913

SUBCOMMITTEE ON SUBDIVISION LAWS
(name)

November 8, 1977 (Missoula)
(date)

NAME	REPRESENTING
R.A. AINSWORTH	MONT. ASSOC. OF REG. LAND SURVEYORS
SCOTT VALENTINE	PROFESSIONAL CONSULTANTS, INC - MISSOULA
C.E. ABRAMSON	Missoula County Board of REALTORS
Robert W. Weaver	" " " " "
BRYCE E BONDURANT	PRESIDENT Msla Co. BOARD of REALTORS
[illegible]	[illegible]
Wes Woodgerd	Individual
JoAnn Woodgerd	Individual
[illegible]	Mont. Sch. Bds. Assn. Dupont Bus. Mangmt
George Volstad	Mont Assoc of Realtors
Kenneth Weller	Missoula Board of Realtors
[illegible]	
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
EVAN DENNEY	President of the Missoula Planning Boar
[illegible]	self
Tonia Bloom	Hamilton - individual
[illegible]	Hamilton individual
Jim Waltermire	Missoula County
Stephen Petrini	Flathead Co. H.D.C.
[illegible]	self
Bob Brugh	Missoula County Board of Realtors
Bill Williams	Florence Carlton Schools, Florence
JEAN O'BRIEN	FLORENCE-CARLTON SCHOOLS, FLORENCE
[illegible]	[illegible]

SUBCOMMITTEE ON SUBDIVISION LAWS
(name)

November 8, 1977 (Missoula)
(date)

NAME	REPRESENTING
Terry Schultz	Lincoln County
Jex T. Cole	Self
Clark Pinkerton	Lewis & Clark Areawide Planning Organizatio
Bobbi Balaz-Davis	Lewis & Clark Areawide Planning Org.
Jim Richard	DNRC
Steve Thompson	DNRC
Mike Kress	Missoula C. Planning
John Crowley	Missoula Planning Board
Earl Bennett	Missoula County Commissioners
Steve Turner	Montana Association of Counties
Cliff Tweeten	Montana Farmers Union
Cliff Christiansen	MT Assn of Realtors
Ethel M Harding	Lake County Clerk & Recorder
David R. Erickson	Lake County Planning Board
Dewitt B. Bowman	Lake County Sanitarian
David Lintz	citizen interest
James M. Kuss	Self
Edward D. [illegible]	[illegible]
Hugh McCanna	[illegible]
Frank M. Stanford	Montana
John F. [illegible]	Lake Mist & Water Co.
Jack Murray	DNRC
Elden Imabnit	Eli & Assoc. Msla
Jack L. [illegible]	Self
A. Reed Marbut	Staff

Public hearing

Billings
(name)

12 Dec 77
(date)

NAME	REPRESENTING
Jack Gribble	Billings Board of Realtors
Jean Anderson	" League of Women Voters
Jean Anderson	" League of Women Voters
Dave Edwards	Bank of Montana
Richard Ellis	Billings Education Assn.
Richard Ellis	" " " "
Mrs. David Shipman	
CAL CUMIN	CUMIN ASSOC. BILLINGS
Dave Lloyd	Billings City Council
Robert Anderson	Anderson/Zeigler/Mich.
ROD WILSON	BILLINGS CHAMBER OF COMMERCE
Jerry Dalton	Yellowstone Audubon Society
[illegible]	Yellowstone Audubon Society
BILL GIBBS	GIBBS-TREFTZ & ASSOCIATES
ELMER E. TREFTZ	" " " "
WOODY WOODS	GIBBS & A. BILLINGS
HARRY OLCOTT	MEMBER BILLINGS YELLOWSTONE PLANNING BOARD
Dean McKane	Representative HD 72

APPENDIX D

SUBDIVISION AND PLATTING ACT
20-ACRE EXEMPTION FROM REVIEW

1. All splits of land should be subject to local review. (Garrett B. Voerman)

2. The 20-acre subdivision restriction is worthless as development occurs mainly at 20+ acres to avoid review. (James Phelps)

3. The 20-acre limit should be a minimum requirement; areas experiencing problems should be allowed to increase the limit or modify it to their purposes. (Cal Cumin)

4. 20-acre law should be eliminated. If a minimum acreage is set, it should be 5 or 3 acres. (Jerry Ditto)

5. All subdivisions, regardless of size, should be reviewed. (Grace Edwards)

6. The acreage limitation should be raised to 40 or 50 acres. (Clark Pinkerton)

7. The 20-acre limitation should be eliminated. (Flathead Conservation District)

8. The 20-acre limitation should be removed and all divisions reviewed. Whatever limit is placed on acreage, subdividers will exceed to escape review. Twenty-acre tracts are not agricultural tracts, they are homesite tracts and they are priced in the subdivision market, not the farm/ranch land market. Perhaps all divisions of land should be subject to public review and approval, but only tracts less than "x" acres in size would have to be surveyed and a certificate or plat recorded on them

   Also, in Colorado, a subdivision is defined to include the division of land into two or more parcels, separate interests, or interests in common; the acreage limitation is defined at 35 acres unless when multiple interests are involved, and then the parcel must have at least 35 acres per individual interest. The legislature should consider such provisions in Montana subdivision laws. (Lake County Planning Board)

9. Any proposal to subdivide land to less than 40 acres should be required to undergo review by the local planning board and county commissioners. (J. D. Peters)

10. The 20-acre limitation should be increased to at least 40 acres to discourage the wasteful division of land into 20+-acre parcels. (John Westenberg)

11. All divisions should be reviewed and a summary review process should be instituted to meet both planning and health needs. (Terry Schulz)

12. All land division should be subject to review. (Stephen Petrini, Flathead APO)

13. All land divisions should be reviewed and a summary review process instituted. (Barbara Elliott)

SUBDIVISION AND PLATTING ACT EXEMPTIONS - GENERAL

1. All exemptions should be tightly regulated to avoid their abuse and end deliberate attempts to evade the Act through them. (Barbara G. McGregor)

2. I. Occasional sale and family conveyance exemptions are being used in Yellowstone County to develop major subdivisions without local review, making it impossible for local officials to properly plan for services. The legislature should:

   a. Strictly define evasion of the Act and provide for enforcement; require administrative review by city or county attorney to ensure compliance;

   b. Clarify requirements of filing certificate of survey using exemptions with clerks and recorders;

   c. Eliminate these exemptions entirely. [11-3862(6)]

   II. Exemption allowing certificate of survey to be filed over platted subdivision has been used to create lots failing to meet area requirements under the zoning ordinance. These exemptions should be prohibited. Any changes in plats should be approved and filed as an amended plat.

   III. Restrict use of mortgage, lien, and trust indenture exemptions to providing security for construction financing. Also require these three exemptions to be surveyed and recorded. (George S. Freeman)

3. Exemptions are used by developers to circumvent review. Counties or cities should have the authority to tighten these minimum requirements according to their needs. (Cal Cumin)

4. Exemptions are abused by developers and the result is unplanned subdivisions with no provision for services. These abuses should be curtailed through tightening or eliminating the occasional sale or family conveyance -- or all divisions through certificate of survey. (Grace Edwards)

5. The occasional sale loophole should be tightened or eliminated. (Dave Shipman)

6. The occasional sale and family conveyance are necessary for bona fide farmers and ranchers, but they are being abused. They should be tightened to eliminate abuse. (Bob Sanderson)

7. The change in use of the land should be regulated when an exemption is used by a landowner. The concept of a rural building permit should be investigated. (Joe Gerbase)

8. Exemptions should be controlled but still allow the individual to do with his land as he sees fit. (Sandy McPherson)

9. Occasional sale and mortgage exemptions should be restricted to prevent abuse. (Joe DeLong)

10. Exemptions are so loose as to enable anyone to do anything he wants to destroy the land. (Wes Woodgerd)

11. Minor subdivisions, occasional sales, and family conveyances should not require state approval. (Hugh Cumming)

12. Exemptions should be tightened to allow local governments to plan for the services developments will need. (Clark Pinkerton)

13. Occasional sale and family split should be redefined or eliminated entirely if it doesn't fulfill the original intent of the Act. (Flathead Conservation District)

14. The legislature should:

    a. Make the mortgage exemption from subdivision review effective only if exercised by the mortgage holder. The borrower and lender could enter a legally binding contract whereby a properly drawn Certificate of Survey describing the property held for security would be put into escrow. If the mortgage holder had to foreclose then the escrow agent would present the C.O.S. for filing without any public review. However, if foreclosure was not necessary, a new parcel of land would not be created outside public review.

    b. Eliminate the occasional sale, family transfer, and agricultural use exemptions from the Act as outright exemptions. Require all divisions of land, regardless of size, to be subject to local public review and approval, and let local government decide how to expeditiously review such divisions for compliance with local comprehensive plans, zoning, etc. (Lake County Planning Board)

15. Family split and occasional sale provisions must be changed to stop massive abuse. (Flathead 208 Project)

16. The occasional sale procedure should be changed to give only one such sale from any given unit each ten years and then only to a member of the family. (J. D. Peters)

17. Legitimate exemptions are needed to allow the farmer or rancher to stay in business. (Cliff Christian)

18. Exemptions should be extensively overhauled if not removed to prevent continued unplanned development. (Terry Schulz)

19. Exemption loopholes should be plugged to minimize damage done to school districts when massive unplanned development occurs. (Bill Willavize)

SANITATION IN SUBDIVISIONS
ADMINISTRATION OF HEALTH STANDARDS

1. a. The legislature should set specific guidelines for health officer review of subdivisions, including:

   i. maximum allowable time for review

   ii. ability to demand and legally require preparation of Environmental Impact Statements

   iii. exactly what review should encompass

   b. Where local expertise and desire for review of subdivisions exists on the local level, the state DHES should grant its review authority to local government.

      i. DHES should provide technical expertise to local governments

      ii. local governments should be required to adopt model subdivision regulations based on those of DHES

   c. State DHES should be better funded in order to provide the kind of service necessary to local governments.

      i. present review fee schedule is inadequate to meet the costs involved in doing the review work at both state and local level

      ii. DHES Subdivision Bureau should have adequate budget to meet their needs while local review agencies collect for their own services

   d. Time frame for local-state health review should be changed. Forcing local health authorities to commit themselves before the experts have had a chance to review the subdivision proposal is a poor practice; local planning boards and health officials should have access to maximum amount of technical, health-related information before making recommendations.

   e. The legislature should provide DHES with inspectors to ensure approved facilities are installed properly.

f. Occasional sales and family conveyances should be locally reviewed. The remainder should be subject to local review for the following reasons:

   i. relieves pressures on local health officer who is the single person standing between the developer and probable approval at the state level

   ii. there are important aspects of single lot splits that are not directly related to environmental health that should be considered

   iii. all splits should be reviewed by local authorities

g. In answer to the criticism that non-professionals are reviewing the work of licensed professionals, there needs to be financial support behind these criticisms. Funds must be provided to local governments for the purpose of hiring a licensed professional engineer.

h. All persons who work with subdivisions should be required to pass an examination administered by DHES covering subdivision law and rules. This would eliminate many delays in approval as correct information would be submitted with original documents.

i. Registered land surveyors and licensed professional engineers do not have adequate control over those in their profession who might provide false information or do shabby work. It has often been through the persistent efforts of local "lay" people that problems with engineering data or design have been brought out and ultimately corrected.

j. The legislature should amend the Subdivision and Platting Act and the Sanitation in Subdivisions Act to force the engineer or surveyor to take legal and financial responsibility for the failure of systems they design.

k. The legislature should provide state and local government with adequate personnel to enforce the law or the law is useless.

l. ES91A requirement should be abolished. (Garrett B. Voerman, Sanitarian - Lake County Health Department)

2. The local review of minor subdivisions will run more smoothly once local sanitarians become well versed in DHES requirements. (Ed Casne)

3. If a county has a sanitarian, then state DHES review should be eliminated. (Jerry Ditto)

4. a. Local review where the expertise is available should be substituted for DHES review.

   b. The time frame for review should be tightened. (Bill Gibbs)

5. DHES should be given authority to look beyond the site of a proposed drain field and assess the impact of multiple sewage systems which will pollute other water supplies. (Wes Woodgerd)

6. The state DHES should make sure the sanitary restrictions are properly enforced in all subdivisions. (Peggy Munoz)

7. The legislature should require the Department of Health and Environmental Sciences (DHES) to review and grant tentative approval to subdivisions prior to submitting subdivision plans for preliminary review by local government. This would give the state a better voice in subdivision review in that DHES could circulate plans to state agencies (as required by the Subdivision and Platting Act) for their comments in deciding whether or not an Environmental Impact Statement would be necessary. Once DHES approved a subdivision, the subdivider would then submit plans for local review and approval. (Lake County Planning Board)

8. DHES technical review should precede local planning board and governing body review to prevent developers from playing one agency against another. (Flathead 208 Project)

9. The State Board of Health should be legislatively mandated to consider only the health aspects of a new tract or subdivision. They should also have a mandated limit of time within which they must consider applications, particularly certificates of survey for single tracts. Although the governing body must consider proposed subdivisions within 60 days, my clients are commonly held up 4 months or more just to get routine health department approval for a single tract. The Certificate of Survey cannot be recorded until Health Department approval is obtained, and sellers cannot get a clear title for loan purposes, etc., until the work is recorded. The best way to speed up this process is to vest this approval power with the local sanitarian, (for single tracts and minor subs) who can be made aware of the problems of such delays. State help should of course be available for consideration of major subdivisions. (Hank Rate)

10. The DHES should not require review of remainders of land less than 20 acres left after segregation of subdivided parcels. Agencies should not be allowed to review and regulate just for the purpose of harassing the public. (W. L. Higginbotham)

11. DHES should transfer review authority to local sanitarians wherever possible, and wherever capabilities exist. Health officials are not land use planners, and proper land use should not be left to them. (Terry Schulz)

12. Local health departments should exercise review whenever they have the expertise. DHES should be forced to take action within reasonable time limits. The public should be better educated to what the health standards are. (Scott Valentine)

SUBDIVISION AND PLATTING ACT
DEDICATION OF PARKLAND

1. Parkland should be set aside as the land is divided, even if it is not developed for many years. (Barbara G. McGregot)

2. Municipalities do not have enough money to landscape and equip existing parkland. The legislature should amend sections 11-2201 et seq. and 16-1601 et seq. to specifically provide for parks as an item for which S.I.D.'s may be created. (Joe Gerbase)

3. a. Confusion exists regarding minor subdivisions and parkland dedication requirements. The definition of such subdivisions should be clarified and governing bodies should be required to approve all methods of satisfying the park requirements.

   b. Allow a portion of cash received in lieu of land dedication to be used for maintenance and upkeep of existing parks or playgrounds.

   c. Establish system of contribution where each proposed subdivision would dedicate land to neighborhood, community or regional parks in the area on a priority system based on a park plan. The plan would include the existing number, sizes and development of local parks, areas where additional parks would be needed, existing undeveloped parks that should be developed and existing developed parks that need additional maintenance and upkeep.

   d. Establish fair market value through appraisal by an independent registered appraiser for each subdivision donating cash in lieu of land dedication.

   e. Establish park requirement for commercial and industrial subdivisions. (George Freeman)

4. Park requirements should not be diminished. But older parks are suffering due to lack of funds for maintenance. The legislature should provide a means for funding maintenance of existing parks as well. (Grace Edwards)

5. Park requirements should be maintained. (Clark Pinkerton)

6. The parkland requirement should be relaxed for divisions of land which create only a single additional parcel. Perhaps, in the case of single lot splits, the park requirements could be waived by the governing body. (Lake County Planning Board)

URBAN v. RURAL SUBDIVISIONS

1. The legislature should separate the platting process for urban vs. rural subdivisions. These distinctions should be made in the following areas:

   a. dedication of parkland

   b. incentives for developers to provide high density within 4 1/2-mile radius and low density in rural areas

   c. public finance for improvements and services

   d. sanitary restrictions

   e. need and necessity vs. public preference and convenience (Joe Gerbase)

2. Eliminate the requirement for state review of subdivisions within a master planned area. This is presently a waste of time and adds to the cost of administration. (George Freeman)

SUBDIVISION AND PLATTING ACT
REVIEW OF MINOR SUBDIVISIONS

1. Review of minor subdivisions is inadequate; the public should have more chance to plan and be involved in these subdivisions. (Wes Woodgerd)

2. Abuse of the minor subdivision law is allowing major developments to occur without review. (Henry Harrington)

FINANCING OF SERVICES FOR SUBDIVISIONS

1. Allow rural areas within the 4 1/2-mile planning radius of cities and towns to use the same procedures outlined in 11-2201 et seq., R.C.M. 1947, where a master plan has been adopted. Allow one person to initiate S.I.D. process as is done for cities and towns. (Joe Gerbase)

2. Public water and sewer facilities should be partially financed through a system of reimbursing a developer for the costs of facilities he installs. This would encourage public water and sewers as opposed to individual septic systems which are less desirable. (Bill Gibbs)

ENERGY-RELATED CONSIDERATIONS
IN SUBDIVISION REVIEW

1. Subdivision review should include:

a. The source and reliability of supply. The subdivision application should include a statement by the electric and gas utilities indicating whether or not supplies are available, how supplying the subdivision would affect other existing and future users, the source of the supply, what facilities would need to be constructed because of this demand, the existing and future reliability of the supply, and amount of the supply (annual, seasonal peaks, and daily peaks).

b. The relationship between the use of the land for subdivision and any planned or potential facility sites or corridors.

c. Conservation measures to be utilized by the subdivision.

d. Renewable energy resources to be developed by the subdivision. (John Orth)

2. Energy conservation should be a consideration in deciding where to channel development. Comprehensive plans should be amended to include this factor. (C. S. Abramson)

DEVELOPMENT OF AGRICULTURAL LAND

1. Unrestricted building on choice agricultural land not only reduces agricultural base, but causes problems and more taxes required because there must be more roads, school bus routes, miles for fire and police services, etc. Farmers and ranchers close to a growing urban community are forced to sell because of taxes. (James Phelps)

2. Preservation of prime agricultural land is the most important issue facing us. Yet farmers must be adequately compensated to allow this. This can be accomplished through changes in the inheritance tax structure, general tax relief, or direct compensation. (Barbara G. McGregor)

3. In the Sidney area, oil companies are inciting farmers to cease production and then create subdivisions that escape review. (E. N. Wheeler)

4. 20-acre limitation has caused too much development of prime agricultural land. (Jerry Ditto)

5. The farmer or rancher who wants to stay in agriculture should be protected. The public interest clause of HB 666 should be retained. (Mrs. Dave Shipman)

6. Prime agricultural land should be preserved; 1-4 class agricultural land should not be subdivided except in case of undue hardship and through variance procedures. Use changes in adjacent land should not injure agriculture. (Joe DeLong)

7. Agricultural land should be preserved, but there must be a means of relieving the farmer of the economic burden of maintaining agricultural land. (Flathead Conservation District)

8. In light of the current economic plight of ranchers, we must retain some vehicle whereby they can sell an occasional tract of land without time-consuming procedures involving a lot of front money, or we will be turning all of our work over to the major developers and running our people off the land. (Hank Rate)

9. Legislation should be enacted to promote development from the urban core area outward to minimize leapfrog development and preserve agricultural land. (Cliff Christian)

ZONING

1. a. Zoning commission's authority should be strengthened.

   b. When a zone change is requested it would be preferable to allow the applicant to build only what he specifically requests, rather than opening the door to many potentially undesirable uses.

   c. A time period of one year in which to make the particular change should be required. (Barbara G. McGregor)

2. There should be a time limit on zone changes. (Les Kitselman)

3. Since zoning has such a major effect on land values, landowners should at least be fully informed by the zoning authority. In addition, landowner initiated zoning has proven to be much more acceptable and in the long run better community planning. The local zoning authority should be required to inform landowners in a proposed zoning area of the details of the proposed zoning, as well as where and when they can protest this zoning. If the zoning is appropriate, it will withstand complete public knowledge of the government proposal. Landowner notification can be performed at minimal cost by using tax notice mailing. (Reed Marbut)

4. a. Voluntary zoning in counties is completely unworkable and ineffective. The law governing composition of the County Zoning Board should be amended to accurately reflect the different interests in the county. County commissioners should not all sit on the board.

   b. The 40-acre minimum should be changed to prevent a chaotic land-use pattern. (Peggy Munoz)

5. Voluntary zoning is also being abused. We attempted to create a voluntary zoning district involving roughly 35 families. Just as we were nearing completion of the three-month process, one of the landowners in the zone submitted his own one-man

zone to the Zoning Board. It permitted anything and everything in order to preempt the land use restrictions in our zone. The Board thought this defensive type of zone was just fine, and, when it was pointed out to them that it was in effect no zone except in name, they said they did not believe in zoning anyway. (Henry Harrington)

6. The legislature should review voluntary zoning procedures and at least increase the minimum size for a district to a figure conducive to good land use planning. Review and study of petitions submitted for districts should be undertaken by professional planning staff. (JoAnn Woodgerd)

7. Counties should have zoning procedures similar to cities in that there should be no zoning protests on zoning changes. (John Crowley)

ADMINISTRATIVE RULES AND ADMINISTRATORS IN GENERAL

1. a. Legislators themselves should write all rules and agencies should be required to follow them exactly.

   b. Rules treat all subdividers equally -- this should not be so; a person living in a community for a long time should be able to sell his land under minimal reasonable rules and not be treated the same as a speculator in the subdivision business. (Merle D. Lloyd)

2. a. Generally, administrators are arbitrary and capricious, causing unnecessary delays and loss of time and money to people wishing to divide their land.

   b. Rules are constantly changing; there should be a limitation on changes. (Jerry Ditto)

3. Local review should be strengthened, as these local people are best able to provide for local needs. (E. N. Wheeler)

4. The 60-day time limit causes some problems. 60 days may not be enough time for a developer to comply with requirements. Yet there is often an unacceptable lapse of time between local level approval and DHES approval. (Grace Edwards)

5. Conflicting authorities in subdivision review should be eliminated. One board may make a decision only to have it be overruled. These authorities should be tightened or clarified. (Les Kitselman)

6. a. Duplication of effort in review should be eliminated.

   b. Requirements should be controlled wherever possible at the local level.

   c. Forms and agencies should be consolidated; there are too many of both to be workable. (Herman Hauk)

7. Administrators should be more tightly controlled and kept within the intent of the law. (Sandy McPherson)

8. The terminology and rules of subdivision law should be simplified so consumers and local officials could better cope with them. (Ted Kylander)

9. Review should be more timely. Delays raise the price of land and homes for the consumer. Final decisions should be made locally and review should be shortened to 45 days from initial submittal. The process should be streamlined. (C. E. Abramson)

10. a. Any acreage "pre-developed" before 1973 should not be subject to the Act.

    b. Any landowner should be free to have plats of surveyed acreage filed with the clerk and recorder without attached restrictions.

    c. All review should be at local level. (Hugh Cumming)

11. a. The regulators, at both state and local level, should be confined to the letter and intent of the law. They abuse their authority.

    b. The time for review should be shortened and new conditions not permitted to be attached.

    c. Non-professionals should be prohibited from reviewing the work of professionals. (R. A. Ainsworth)

12. a. Regulators should not be permitted to exceed the law.

    b. When expert or scientific evaluation is requested in the subdivision review process, this evaluation should be made by qualified experts.

    c. Since there is a well documented demand for residential living space, we should reverse our approach to the eight criteria known as "in the public interest." If there is demand, there is a need for living space; if there is a need, development must be considered to be "in the public interest." I would like to propose that the law be changed to read, "County Commissioners must issue written findings of fact finding the subdivision not to be "in the public interest," based on the now famous eight criteria. If these eight criteria cannot demonstrate a reason to deny a development, it will automatically be assumed to be in the public interest. (Reed Marbut)

13. Review time should not be shortened, due to the longevity of the effects of the proposed projects. (Peggy Munoz)

14. Time constraints for review should be left as they are presently in the law. (Clark Pinkerton)

15. Review should be at local level and coordinated with comprehensive plan process. (Flathead Conservation District)

16. The DCA is trying to stop all sales of land and should stop these efforts to stop growth. (Charles K. Green)

17. a. Regulators should be prevented from continually making changes and new conditions on plats.

    b. Legislative mandate is badly needed to require acceptance of deeds based on executed but unrecorded contracts for deed, and also of Plats and Certificates of Survey that were prepared in accordance with laws and regulations in force at the time they were dated. The laws of fraud should control abuse.

    c. DCA requirements for extensive notarized affidavits on the face of a Certificate of Survey which state that the landowner is not breaking the law should be deleted. A simple statement by the surveyor as to why a job is not subject to public review should suffice. We sign and seal our work, and our licenses are on the line. (Hank Rate)

18. The legislature should consider a one-step ombudsman for subdivision review. (C. E. Abramson)

19. The law should define what a complete application is so that delays in approval are minimized. (Barbara Elliott)

MISCELLANEOUS

1. All subdivision plats and certificates of survey should indicate utility strips for natural gas, electrical, telephone, and television lines. Also, the granting of such easement should be attached in a statement provided by Mountain Bell. MPC and MDU concur in the request. (J. R. Hughes, Mountain Bell)

2. a. Land use planning and subdivision laws are discriminatory. Planning for growth is a must; but present restrictions are overbearing and reminiscent of kingdoms and Russia.

   b. Statistics quoted by agencies and environmentalists are misleading and counterproductive. (Merle D. Lloyd)

3. a. The state should provide a minimum subdivision requirement with counties allowed to add to it by county ordinance to fit the different local governments' needs.

   b. Prohibitions on building on floodplains and steep slopes should be strengthened. (James Phelps)

4. The legislature should restrict review by the Montana PSC of water service area extensions. (Joe Gerbase)

5. a. Guidelines and minimum standards to ensure the safety of forested subdivisions, such as a requirement of two separated access roads for evacuation in case of fire, should be established. Local governments should administer these standards.

   b. Residential subdivisions should not be allowed within likely floodplain boundaries. (John Orth)

6. In northeastern Montana, oil companies are causing problems by making de facto subdivisions that evade review. (E. N. Wheeler)

7. The Foreign Land Sales Practices Act should be strengthened. A full disclosure bill, requiring realtors and developers to state just what a buyer is getting, should be passed. (Cliff Christian)

8. The state of Montana must take into consideration the constantly increasing demand for living space. If we are to encourage single-family home ownership, we must change our stance on subdivision requirements. Perhaps less than perfect criteria should be considered to get young couples out of trailers and into their own homes. We could then, by way of tax incentives, assist in upgrading residential areas. County governments should be required to face housing shortage as a very important criteria in subdivision review. (Reed Marbut)

9. a. Require a cash payment from the subdivider to the school district affected by a subdivision. Such payment would be based on anticipated numbers of school children. Such payment would help to mitigate short term and long term financial impacts to the school system. Subdivision regulations for Jefferson County, Colorado, require that residential subdivisions shall provide park and school lands at a rate of 5.5 acres of school land and 4.0 acres of parkland per thousand population. A similar requirement in Montana would certainly mitigate local impact to schools and taxpayers.

   b. The law should specify the use of certified mail in order to effect a lower cost of government to the taxpayers.

   c. The requirement that the Planning Board deliver its recommendation to the governing body should be eliminated. This would allow the Board to hold public hearings at the beginning of the review period and give full consideration to public testimony in its recommendation. The governing body and the Planning Board can work out any time scheduling problems. (Lake County Planning Board)

10. Possibly public or private money could be spent to buy "rights to subdivide" [transferable development rights]. In that way the rancher could receive an incentive to stay on the land. Perhaps coal tax money could be used for this. (David Maclay)

11. The legislature should resist efforts to weaken subdivision laws. Strict enforcement of the law is to be commended, not criticized. (Wendy Ross Cromwell)

12. The public interest could best be served through correcting the following problems:

    a. There are roughly 80 pages of instructions (county and state) for a developer who wishes to subdivide land, but there is not even one page of instructions for those who wish to oppose the subdivision in the name of the public interest. There is a list of "criteria for public interest" in the Montana Subdivision and Platting Act (11-3867), but the vagueness of these criteria and how they are to be met renders them useless. Legally, opposition to subdivision on the basis of these criteria has been futile since the Beaver Creek South decision.

    b. County planning boards whose recommendations determine the approval or disapproval of a subdivision do not represent the public interest. Members are selected on the basis of their interest, but interest in what? Certainly not in planning. One member of the Ravalli County Planning Board has been quoted as saying to someone whom he thought was interested in subdividing his land, "Don't worry about the subdivision regulations; I'm on the Planning Board."

    c. If the land is flat and out of the flood plain, it can be subdivided to one acre with a septic system anywhere in the state. This law seems to be based on a total ignorance of the geological and topographical variety of land in Montana.

    d. The reluctance of the Economic Geology Division of the Montana Bureau of Mining and Geology to make on-site testing makes that Bureau an advocate for the subdivider rather than for the public. Parenthetically, let me say that with the exception of the politically and legally powerless Department of Community Affairs, every state agency connected with subdivision was singularly unhelpful in determining or enforcing the public interest. Without their rubber stamps, they would all be hopelessly confused in their jobs. (Henry Harrington)

13. The Planned Community Development Act is confusing and ineffective for annexing subdivisions. More teeth need to be given to the comprehensive plan and planning board. (Gary Stephens)

14. Air quality should be a factor in approval or denial of subdivisions. (Dick Sheridan)

15. Procedures for removal from rural fire districts should be simplified to encourage necessary annexation of subdivisions. (Bryce Bonderant)

APPENDIX E

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE ISSUANCE OF INDUSTRIAL DEVELOPMENT BONDS TO FINANCE WATER SUPPLY AND DISTRIBUTION SERVICES AND SEWAGE TREATMENT AND DISPOSAL SERVICES FOR RESIDENTIAL OR COMMERCIAL SUBDIVISIONS; AMENDING SECTIONS 90-5-101 AND 90-5-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 90-5-101, MCA, is amended to read:

90-5-101. Definition of terms. As used in this part, unless the context ~~otherwise~~ requires otherwise, the following definitions apply:

(1) "Agricultural enterprises" means any agricultural enterprise, including but not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(3) "Mortgage" means a mortgage or a mortgage and deed of trust or other security device.

(4) "Municipality" means any incorporated city or town

in the state.

(5) "Project" means any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; state and federal governmental facilities; ~~and~~ retirement housing, hospitals, long-term care facilities, or medical facilities; and water supply and distribution facilities and sewage treatment and disposal facilities for residential or commercial subdivisions."

Section 2. Section 90-5-102, MCA, is amended to read:

"90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:

(a) to acquire, whether by construction, purchase, devise, gift, or lease or any one or more of such methods, one or more projects which shall be located within this state and may be located within, without, partially within, or partially without the municipality or county;

(b) to lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict

with the provisions of this part;

(c) to issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and to secure the payment of such bonds as provided in this part, which revenue bonds may be issued in two or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this part; and

(d) to sell and convey any real or personal property acquired as provided by subsection (1)(a) of this section and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

(2) ~~No~~ Except as provided in subsection (3), no municipality or county shall have the power to operate, as a business or in any manner except as the lessor thereof, any project referred to in this section, nor shall they have any power to acquire any such project or any part there of by condemnation.

(3) A municipality or a county may operate a water supply and distribution facility or a sewage treatment and disposal facility for residential or commercial subdivisions if the following conditions are met:

(a) the proposed project will connect to an existing municipality- or county-owned and operated water or sewage system; and

(b) the governing body determines, after the public hearing required in 90-5-104, that the operation of the project by the municipality or county would be in the public interest of the municipality or county."

-End-

APPENDIX F

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING COUNTIES THE AUTHORITY TO ISSUE REVENUE BONDS FOR FINANCING CONSTRUCTION, MAINTENANCE, AND OTHER SERVICES AND GRANTING COUNTIES THE AUTHORITY TO ISSUE REFUNDING REVENUE BONDS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This [act] may be cited as "The County Revenue Bond Act of 1979".

Section 2. Definitions. Whenever used in this [act], unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Governing body" includes bodies and boards, by whatever names they may be known, having charge of finances and management of a county.

(2) "State agency" includes all offices, boards, bureaus, commissions, or similar instrumentalities of state government.

(3) "Undertaking" means any one or a combination of the following:

(a) water and sewer systems, together with all parts thereof and appurtenances thereto, including but not limited

to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport buildings;

(c) convention facilities;

(d) public recreation facilities; and

(e) public parking facilities or other revenue-producing facilities and services authorized for counties.

Section 3. Interpretation. (1) The powers conferred in this [act] shall be in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this [act] for these purposes, notwithstanding any general, special, or local law that may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of a like undertaking or the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law, including but not limited to any requirement for approval by the voters of any county.

Section 4. Authority to acquire, construct, maintain,

and operate various undertakings. In addition to the powers which it now has, any county governing body may:

(1) construct; acquire by gift, purchase, or the exercise of the right of eminent domain; reconstruct; improve; better; or extend any undertaking within or without the county or partially within or partially without the county and acquire by gift, purchase, or the exercise of the right of eminent domain such land or rights in land or water rights necessary for the undertaking;

(2) operate and maintain any undertaking and furnish the services, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such county; and

(3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by such undertaking.

Section 5. Pollution abatement. In addition to the powers which it now has, any county governing body may:

(1) enter into cooperative agreements with and accept contributions from industrial establishments relative to the planning, construction, lease or other acquisition, maintenance, or operation of undertakings and apply for and accept grants and loans or any other aid which the United States or any agency thereof may provide to any political

subdivision or agency of this state for undertakings, including all necessary preliminary actions, the purpose of which is to aid in the prevention or abatement of water pollution;

(2) make contracts and execute instruments containing such terms, provisions, and conditions as in the discretion of the governing body of the county may be necessary, proper, or advisable for obtaining such aid;

(3) enter into contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the county of sewer facilities when the governing body of the county determines the action to be in the public interest and essential in order to abate or reduce the pollution of waters caused by discharge of industrial waste by the industrial establishment and to provide for periodical payment by the industrial establishment to the county of an amount at least sufficient, as determined by the governing body, to compensate the county for the cost of providing (including the payment of principal and interest charges, if any), operating, and maintaining the sewer facilities serving such industrial establishment.

Section 6. Cooperation among counties. (1) Any two or more counties, through their respective governing bodies, may enter into contracts for the planning, construction,

lease or other acquisition, and the financing of an undertaking, in whole or in part, and the maintenance and operation thereof.

(2) Any counties contracting with each other may also provide in any contract for a board, commission, or other body, as their governing bodies may determine proper, for the supervision and general management of the undertaking and for its operation and may prescribe its powers and duties and fix the compensation of the members.

(3) No county may construct an undertaking wholly or partly within the corporate limits of another county without the consent of the governing body of the other county.

Section 7. Authority to issue revenue bonds. In addition to the powers which it now has, any county governing body may:

(1) issue bonds to finance, in whole or in part, the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(2) pledge, for the punctual payment of the bonds issued and interest thereon, an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereafter constructed or acquired) or of any part of the undertaking sufficient to pay those bonds and interest as they become due, with the amount consisting of

all or any part of the revenue, and to create and maintain reasonable reserves.

Section 8. Determination of cost. The governing body of the county in determining cost may include all costs and estimated costs of the issuance of the bonds; all engineering, inspection, fiscal, and legal expenses; and estimated interest accruing during the construction period and for 6 months thereafter on money borrowed or estimated to be borrowed for the undertaking.

Section 9. Nature of revenue bonds. (1) No holder of any bonds issued under this [act] may compel any exercise of taxing power of the county to pay those bonds or the interest thereon.

(2) Each bond issued under this [act] shall state in substance that:

(a) the bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and

(b) the bond does not constitute a debt of the county within the meaning of any constitutional or statutory limitation or provision.

Section 10. Undertakings to be self-supporting. (1) The governing body issuing bonds pursuant to this [act] shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of such undertaking and shall revise the rates, fees, or

charges whenever necessary so that the undertaking will always be self-supporting.

(2) The rates, fees, or charges prescribed shall produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon for the payment of which the revenue is pledged, charged, or otherwise encumbered, including reserves therefor; and

(b) provide for all expenses of operation and maintenance of such undertaking, including reserves therefor.

Section 11. Use of revenue from undertaking. (1) Any governing body issuing bonds pursuant to this [act] for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may appropriate, apply, or extend the revenue of such undertaking to:

(a) pay when due all bonds and interest thereon for the payment of which the revenue is pledged, charged, or otherwise encumbered, including reserves therefor;

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves therefor;

(c) pay and discharge notes, bonds, or other obligations and interest thereon not issued under this [act], for the payment of which the revenue of the undertaking is pledged, charged, or encumbered;

(d) pay and discharge notes, bonds, or other obligations and interest thereon that do not constitute a lien, charge, or encumbrance on the revenue of such undertaking and were issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking; and

(e) provide a reserve for betterments to the undertaking.

(2) Unless adequate provision has been made for the foregoing purposes, no county may transfer the revenue of such undertaking to its general fund.

Section 12. Authorization for undertaking and issuance of bonds. (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this [act].

(2) Bonds may be issued under this [act] by resolution or resolutions of the governing body of the county:

(a) without an election; or

(b) when authorized by a majority of the qualified electors voting upon the question at a special election, after the governing body in its sole discretion has submitted the question to the electorate.

Section 13. Special election on question of issuing bonds. When the governing body has chosen to submit the

question of issuing bonds to the electorate, the special election shall be noticed and conducted as provided in 7-7-2229 through 7-7-2235. The special election shall be held not later than the next county election held after the governing body of the county has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of an undertaking and ordered a special election.

Section 14. Covenants in resolution authorizing issuance of bonds. A resolution authorizing the issuance of bonds under this [act] may contain covenants concerning:

(1) the purpose to which the proceeds of sale of the bonds may be applied and the use and disposition thereof;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves;

(3) the transfer from the general fund of the county to the account or accounts of the undertaking of an amount equal to the cost of furnishing the county or any of its agencies with the services, facilities, or commodities of the undertaking;

(4) the issuance of other bonds payable from the revenue of the undertaking;

(5) the operation and maintenance of such undertaking;

(6) the insurance to be carried thereon and the use

and disposition of insurance money;

(7) the books of account and the inspection and audit of those books; and

(8) the terms and conditions upon which the holders of the bonds or any of them or any trustee therefor is entitled to:

(a) the appointment of a receiver by the district court, which court has jurisdiction in such proceedings and which receiver may enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue thereafter arising from the undertaking in the same manner as the county itself might do.

Section 15. Remedies. The provisions of this [act] and any such resolution are enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate proceeding.

Section 16. Presumptions of validity of bonds. (1) The bonds bearing the signatures of officers in office on the date of the signing are valid and binding obligations notwithstanding that before delivery and payment any of the persons whose signatures appear thereon may have ceased to

be officers of the county issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds contain a statement that they are issued pursuant to this [act], which statement is conclusive evidence of their validity and of the regularity of their issuance.

Section 17. Liens arising from bonds. The resolution or resolutions shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

Section 18. Details relating to revenue bonds. (1) Bonds authorized to be issued under this [act] must bear interest at an annual rate not exceeding 9%, payable semiannually.

(2) The resolution may provide that the bonds:

(a) be in one or more series;

(b) bear certain dates;

(c) mature at a certain time, not exceeding 40 years from their respective dates;

(d) be payable in a certain place;

(e) carry certain registration privileges;

(f) be subject to terms of redemption;

(g) be executed in a specified manner;

(h) contain specified terms, covenants, and conditions; and

(i) be in coupon registered form.

Section 19. Sale of bonds. (1) Bonds authorized to be issued under this [act] may not be sold at less than par.

(2) (a) The bonds may be sold at private sale to the United States or any agency, instrumentality, or corporation thereof.

(b) Unless sold to the United States or any agency, instrumentality, or corporation thereof, the bonds shall be sold at public sale after notice of the sale.

Section 20. Notice of sale of bonds. (1) Except as provided in subsection (2), the notice of sale of bonds required by subsection (2)(b) of [section 19] shall be published once at least 5 days prior to such sale:

(a) in a newspaper circulating in the county; and

(b) in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California.

(2) If the bond issue is in an amount of less than $150,000, the bond issue must be advertised at least 5 days prior to such sale:

(a) in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco; and

(b) in a newspaper as specified in part 24, chapter 5, Title 7, if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over.

Section 21. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as determined by the governing body may be issued to the purchaser of bonds sold pursuant to this [act]. The bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code--Investment Securities.

Section 22. Authority to issue refunding revenue bonds. (1) In addition to the powers which it now has, any county governing body may refund bonds issued for any of the purposes listed in subsection (1) of [section 8], whether issued under authority of this [act] or of any other applicable law.

(2) Refunding revenue bonds issued as authorized in this section shall be governed by all of the provisions of [sections 1 through 22] as fully as bonds issued for the initial financing of any undertaking and by the further provisions of tnis [act].

(3) Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

Section 23. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if:

(a) they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient; or

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension. The lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien

of the outstanding bonds refunded, under the terms of the resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding.

Section 24. Exchange or sale of refunding revenue bonds. (1) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest.

(2) Nothing in this section requires the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of the outstanding bond.

Section 25. Deposit of proceeds of refunding revenue bonds in escrow. (1) If refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company. The bank or trust company may have its principal place of business within or without the state and shall:

(a) be a member of the federal reserve system; and

(b) have combined capital and surplus not less than $1 million.

(2) The proceeds deposited in escrow shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as are required to provide funds sufficient to pay, when due, the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption and to pay and redeem the principal amount of each bond at maturity or, if prepayable, at its earliest redemption date and any premium required for redemption on such date. The resolution authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities which may be purchased with the escrow fund are limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

Section 26. Use of excess revenues and pledged reserves. (1) Revenues and other funds on hand in excess of amounts pledged by resolutions authorizing outstanding bonds

for the payment of principal and interest currently due thereon and reserves securing payment may be used to pay the expenses incurred by the county for the purpose of the refunding, including without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.

(2) Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in [section 26], to the extent consistent with the resolutions authorizing the outstanding bonds.

-End-

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 7-12-2102 AND 7-12-4102, MCA, TO ALLOW FOR THE CREATION OF RURAL AND SPECIAL IMPROVEMENT DISTRICTS FOR THE DEVELOPMENT AND MAINTENANCE OF PUBLIC PARKS AND COMMON AREAS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-12-2102, MCA, is amended to read:

"7-12-2102. Authorization to create rural improvement districts upon petition. Whenever the public interest or convenience may require and upon the petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase, or maintaining:

(1) devices intended to protect the safety of the public from open ditches carrying irrigation or other water; ~~and maintaining~~

(2) sanitary and storm sewers;

(3) light systems;

(4) waterworks plants;

(5) water systems;

(6) public parks or common areas;

(7) sidewalks; and

(8) such other special improvements as may be petitioned for."

Section 2. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council has power to create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding 20 years; to make such assessments payable in installments; and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

(2) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to:

(a) create special improvement districts for building, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for building, ~~and~~ constructing, and maintaining municipal swimming pools,

public parks, common areas, and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the construction or reconstruction therein of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water

mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees thereon;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by such city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by

water;

(f) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of such city; and

(g) maintain, preserve, and care for any and all of the improvements herein mentioned."

-End-

APPENDIX H

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE SUBDIVISION AND PLATTING ACT AND RELATED LAND-USE STATUTES; EXEMPTING CERTAIN SUBDIVISIONS FROM REVIEW, REDEFINING SUBDIVISIONS, AND MAKING CERTAIN MINOR CHANGES; AMENDING 76-1-606, 76-3-103, 76-3-104, 76-3-207, 76-3-504, 76-3-505, 76-3-508, 76-3-601, 76-3-604, 76-3-605, 76-3-609; AND REPLALING 76-3-201, and 76-3-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-1-606, MCA, is amended to read:

"76-1-606. Effect of master plan on subdivisions and plats. (1) ~~Where~~ When a master plan containing the provisions specified in subsection (3) has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance snall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter:

(a) a plat involving lands within the corporate limits

of the city and covered by said master plan shall not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(3) For purposes of this section and 76-3-505, 76-3-604, and 76-3-609(3), the master plan must contain:

(a) a land use plan that identifies geographic areas suitable for residential, commercial, or industrial land uses or sets forth community policy regarding quality or location of urban development;

(b) a housing plan that identifies the existing housing units by type and number and the estimated availability of housing by type and number of units;

(c) a public services plan that identifies existing public services and facilities, including but not limited to

systems for water supply, sewage treatment and solid waste disposal, parks and recreation, schools, roads and bridges, and police and fire protection; the capacity of each; and identifies the needs for improvement or expansion of those services and facilities.

~~(3)~~(4) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded."

Section 2. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to

transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(4) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(5) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

~~(6) "Irregularly-shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.~~

~~(7) "Occasional sale" means one sale of a division of land within any 12-month period.~~

~~(8)~~ (6) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~(9)~~ (7) "Plat" means a graphical representation of a

subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(10)~~(8) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, utility easements, and other elements of a subdivision which furnish a basis for review by a governing body.

~~(11)~~(9) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant thereto.

(10) "Minor subdivision" means a subdivision containing five or fewer parcels where proper access to all lots is provided and where, if park dedication is required, it shall be met by cash in lieu of land donation.

~~(12)~~(11) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to practice surveying in the state of Montana.

~~(13)~~(12) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, chapter 67) to

practice engineering in the state of Montana.

(13) "Relocating a common boundary line" means the establishment of a new location for a boundary line between abutting parcels with no additional parcels being created.

(14) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided which creates one or more parcels ~~containing less than 20 acres, exclusive of public roadways,~~ in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and shall include any resubdivision and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes."

Section 3. Section 76-3-104, MCA, is amended to read:

"76-3-104. What constitutes subdivision. A subdivision shall comprise only those parcels ~~less than 20 acres~~ which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not."

Section 4. Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions. (1) Except as provided in subsection (2), unless the method of disposition

is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) ~~divisions~~ one division made outside of a platted ~~subdivisions~~ subdivision for the purpose of a gift or sale to ~~any~~ each member of the landowner's immediate family, provided that any additional conveyance to the same family member shall be reviewed under the summary review procedures of 76-3-609;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell ~~where~~ when the parties to the transaction enter a ~~convenant~~ covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes and that residential, commercial, and industrial uses or structures will be excluded on parcels of less than 40 acres;

~~(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;~~

~~(e)~~(d) for five or fewer lots within a platted

subdivision, relocation of common boundaries and the aggregation of lots;

(e) divisions ordered by a court of record pursuant to 40-4-402 of the Uniform Marriage and Divorce Act or pursuant to the law of decedents' estates, provided that the case number of the order is noted on the certificate of survey;

(f) divisions that could be created pursuant to the law of eminent domain.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter."

Section 5. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. (1) Not later than December 31, 1973, the department of community affairs, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act, prescribe reasonable minimum

requirements for subdivision regulations adopted pursuant to this chapter.

(2) The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this chapter. In prescribing the minimum contents of the subdivision regulations, the department of community affairs, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment except for those subdivisions described in 76-3-505.

(3) The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision. Such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body."

Section 6. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of ~~minor~~ certain subdivisions. (1) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats meeting any of the following conditions:

~~(a) containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds, and which have been approved by the department of health and environmental sciences where such approval is required by part 1 of chapter 4~~ comprising a minor subdivision;

(b) consisting exclusively of parcels larger than 40 acres in size; or

(c) lying within the corporate boundaries of a municipality or lying within areas for which a master plan containing the minimum requirements described in 76-3-606(3) has been adopted and to which the subdivision conforms. ~~provided that reasonable~~

(2) Reasonable local regulations may contain additional requirements for summary approval."

Section 7. Section 76-3-508, MCA, is amended to read:

"76-3-508. Procedure if local government fails to adopt regulations. In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations,

these shall supersede those promulgated by the department ~~but shall be no less stringent.~~"

Section 8. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of preliminary plat for review. (1) Except where a plat is eligible for summary approval, the subdivider shall present to the governing body or the agent or agency designated thereby the preliminary plat of the proposed subdivision for local review. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body.

(b) (i) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat shall be submitted to and approved by the governing body of the county.

(ii) However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment.

(iii) If the proposed subdivision is contiguous to the

boundary of an incorporated city or town or is separated from a corporate boundary by only a public road, the approval by the county governing body shall be contingent upon a written finding by the city or town that the design and location of any roads or central water and sewer facilities will be compatible with the existing facilities of the municipality.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies.

(3) This section and 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 9. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan that meets the requirements specified in 76-1-606(3), if one has been adopted, pursuant ~~to chapter 1~~ to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of

its presentation unless the subdivider consents to an extension of the review period. If the governing body fails to act within the prescribed time period, the subdivision is approved.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat."

Section 10. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by ~~registered or~~ certified mail not less than 15 days prior to the date of the hearing.

(3) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. ~~This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.~~"

Section 11. Section 76-3-609, MCA, is amended to read:

"76-3-609. ~~Review~~ Summary review procedure for ~~minor~~ certain subdivisions. Except as provided in [section 13], summary review procedures shall be as follows:

(1) ~~Subdivisions~~ For minor subdivisions ~~containing five or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:~~

~~(i) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof.~~

(a) the subdivider shall submit either a preliminary plat that complies with local regulations or a final plat that complies with local regulations and the department of community affairs' uniform standards for final subdivision plats. The governing body shall act on the plat of the first

minor subdivision from a tract within 35 days of submittal in accordance with 76-3-611 if a final plat is submitted or in accordance with 76-3-610 if a preliminary plat is submitted. If the governing body fails to act within 35 days of submittal, the subdivision is approved.

~~(2)~~(b) ~~The~~ the governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision~~;~~.

~~(3)~~(c) ~~The~~ the requirements for holding a public hearing and preparing an environmental assessment ~~shall~~ and finding that the subdivision is in the public interest do not apply to the first ~~such~~ minor subdivision created from a tract of record~~;~~.

~~(4)~~(d) ~~Subsequent~~ second and subsequent subdivisions from a tract of record shall be reviewed under 76-3-505 and regulations adopted pursuant to that section.

(2) For subdivisions consisting exclusively of parcels larger than 40 acres:

(a) the subdivider shall submit either a preliminary plat which complies with local regulations or a final plat which complies with local regulations and the department of community affairs' uniform standards for final subdivision plats. The governing body shall act on the plat within 35

days of submittal in accordance with 76-3-611 if a final plat is submitted or in accordance with 76-3-610 if a preliminary plat is submitted. If the governing body fails to act within 35 days of submittal, the subdivision is approved.

(b) the requirements for holding a public hearing, preparing an environmental assessment, and finding that the subdivision is in the public interest do not apply;

(c) the governing body's review and approval shall be limited to a written determination that appropriate access and any easements are properly provided.

(3) For subdivisions within the corporate boundaries of a municipality or within areas covered by a master plan containing the elements listed in 76-1-606(3) and to which the subdivision conforms:

(a) a preliminary plat must be submitted and acted upon pursuant to 76-3-610, except that the requirements for preparation of an environmental assessment and a finding that the subdivision is in the public interest do not apply. If the governing body fails to act within 60 days of submittal, the preliminary plat is approved.

(b) a final plat may be approved by the governing body only after review pursuant to 76-3-611."

Section 12. There is a new MCA section that reads:

NEW SECTION. Major impact resulting from cumulative

effect of several minor subdivisions -- when reviewed. When so many minor subdivisions are proposed for the same general area that the governing body believes their cumulative effect on the provision of public services or the natural environment may be significant, it shall require the preparation of an environmental assessment and a public hearing to address the overall impact of the subdivisions and review them pursuant to 76-3-608 and the other provisions for review of major subdivisions in [Title 76, chapter 3, part 6].

Section 13. Repealer. Sections 76-3-201 and 76-3-210, MCA, are repealed.

-End-

APPENDIX I

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 76-3-608, MCA, TO MODIFY AND DEFINE THE PUBLIC INTEREST CRITERIA FOR LOCAL GOVERNMENT REVIEW OF SUBDIVISIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) ~~The~~ Except for those subdivisions eligible for summary review, the basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations, and additional information demonstrate that development of the subdivision would be in the public interest. ~~The governing body shall disapprove any subdivision which it finds not to be in the public interest.~~

(2) To determine whether the proposed subdivision would be in the public interest, the governing body shall issue a written ~~findings~~ finding ~~of fact which weigh the following criteria for public interest~~ that considers at least the following:

~~(a)--the-basis-of-the-need-for-the-subdivision;~~

~~(b)--expressed-public-opinion;~~

~~(c)--effects-on-agriculture;~~

~~(d)--effects-on-local-services;~~

~~(e)--effects-on-taxation;~~

~~(f)--effects-on-the-natural-environment;~~

~~(g)--effects-on-wildlife-and-wildlife-habitat;-and~~

~~(h)--effects-on-the-public-health-and-safety.~~

(a) the compatibility of the subdivision with adopted community goals, policies, or plans;

(b) (i) the effect the subdivision would have on public schools, services, and facilities (including the extent to which new or expanded services would be needed to serve the subdivision);

(ii) who would bear the various costs of the additional services;

(iii) what legal constraints affect the provision of those services; and

(iv) whether the subdivision would allow the installation or improvement of services not feasible for present landowners;

(c) the effects the subdivision would have on taxation, such as the effects on taxable valuation, local tax revenues, local mill levies, the local government's bonded indebtedness, and special taxing districts;

(d) the effect the subdivision and its construction would have on ground and surface water, air, soils, slopes, vegetation, wildlife, and historical or archaeological sites;

(e) the effect on the public health and safety of present and future residents from potential hazards such as flooding, avalanches, rockslides, high-pressure gaslines, high-voltage powerlines, nearby industrial or mining operations, or unsafe airport or traffic conditions."

-End-

APPENDIX J

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE REQUIREMENTS FOR DEDICATION OF PARKLAND FOR SUBDIVISIONS; ALLOWING A PORTION OF PARK MONEY TO BE USED FOR MAINTENANCE OF EXISTING PARKS; AND AMENDING SECTION 76-3-606, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-606, MCA, is amended to read:

"76-3-606. Dedication of land to public -- cash donations. (1) ~~A--plat--of-a-residential-subdivision-shall show-that-one-ninth-of-the-combined-area-of-lots-5-acres--or less--in--size--and-one-twelfth-of-the-combined-area-of-lots greater-than--5--acres--in--size,--exclusive--of--all--other dedications,-is-forever-dedicated-to-the-public-for-parks-or playgrounds.--No-dedication-may-be-required-for-the-combined area-of-those-lots-in-the-subdivision-which-are-larger--than 10--acres--exclusive--of--all-other-dedications.~~ Within each residential subdivision, 1,000 square feet of land per dwelling unit shall be dedicated to the public for parks and playgrounds. The governing body, in consultation with the planning board having jurisdiction and in conformance to any park plan adopted by the governing body, may determine

suitable locations for such parks and playgrounds.

(2) Where the dedication of land for parks or playgrounds is undesirable because of size, topography, shape, location, or other circumstances, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of all or part of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. ~~Such~~ The cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds. and up to one-third of the cash received in lieu of land dedicated under this section may be used for routine maintenance of existing parks or playgrounds. Park funds shall be expended according to a park plan or policy statement, which must be adopted by the governing body before expenditure of park funds."

-End-

APPENDIX K

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PRESCRIBE DUTIES OF CLERKS AND RECORDERS AND CITY ATTORNEYS WITH REGARD TO SUBDIVISION FILING REQUIREMENTS; AMENDING SECTIONS 76-3-301 AND 76-3-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-301, MCA, is amended to read:

"76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form or that does not conform to drafting and filing requirements of this chapter.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1)(b).

~~(2)~~(3) If illegal transfers of any manner are made, the county attorney, or the city attorney if the land lies

within the incorporated boundaries of a municipality shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. However, if the city attorney fails to act within 60 days of written notification of the violation, when the land lies within the incorporated municipal boundaries, the county attorney shall commence the necessary action. The cost of such action shall be imposed against the ~~person transferring the property~~ party not prevailing."

Section 2. Section 76-3-404, MCA, is amended to read:

"76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and ~~file for record~~ submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of such map without trigonometric

calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this chapter.

(4) The county clerk and recorder shall refuse to file any certificate of survey that does not conform to the drafting and filing requirements of this chapter."

-End-

APPENDIX L

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE EXEMPTION FROM SURVEYING AND PLATTING REQUIREMENTS FOR LANDS ACQUIRED FOR STATE HIGHWAYS; AMENDING SECTION 76-3-209, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-209, MCA, is amended to read:

"76-3-209. Exemption from surveying and platting requirements for lands originally acquired for state highways. Instruments ~~of transfer of land which is~~ by which the department of highway transfers land that it originally acquired for state highways may refer by parcel and project number to state highway plans which have been ~~recorded in compliance with 60-2-209~~ filed with the clerk and recorder and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording."

-End-

APPENDIX M

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR EXPANDED LOCAL GOVERNMENT REVIEW OF SANITARY REQUIREMENTS FOR SUBDIVISIONS; MODIFYING THE DEFINITION OF A SUBDIVISION; PROVIDING NEW ADMINISTRATIVE AND JUDICIAL REMEDIES; AND AMENDING 76-4-102 THROUGH 76-4-105, 76-4-108, 76-4-109, 76-4-121 THROUGH 76-4-125, AND 76-4-128, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of health and environmental sciences.

(2) "Department" means department of health and environmental sciences.

(3) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(4) "Person" means the state, a political subdivision of the state, an institution, a firm, a corporation, a partnership, an individual, or other entity.

~~(4)~~(5) "Public water supply system" or "public sewage disposal system" mean, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

~~(5)~~(6) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

~~(6)~~(7) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

~~(7)~~(8) "Subdivision" means a division of land or land so divided which creates one or more parcels ~~containing less than 20 acres, exclusive of public roadways,~~ in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of

size, which provides permanent multiple space for recreational camping vehicles or mobile homes."

Section 2. Section 76-4-103, MCA, is amended to read:

"76-4-103. What constitutes subdivision. A subdivision shall comprise only those parcels ~~of less than 20 acres~~ which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not."

Section 3. Section 76-4-104, MCA, is amended to read:

"76-4-104. Rules for administration and enforcement. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards shall provide the basis for approving subdivision plats and subdivision certificates of survey for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, groundwater level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall provide for the review of the following subdivisions by the local government according to

the provisions of 76-4-128:

(a) minor subdivisions containing five or fewer parcels of land whenever each parcel will contain individual water and sewage facilities;

(b) subdivisions comprised of parcels of 10 acres or larger in size when each parcel will contain individual water and sewage facilities.

~~(3)~~(4) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat, ~~and~~ subdivision certificate of survey, or other documentation showing the layout or plan of development, including:

(i) total development area;

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat."

Section 4. Section 76-4-105, MCA, is amended to read:

"76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed $25 per parcel, for services rendered in the review of ~~plats and~~ subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in 17-2-102. The fees shall be used for review of plats and subdivisions based on the complexity of the

subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124 or under the provisions of 76-4-128, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities."

Section 5. Section 76-4-108, MCA, is amended to read:

"76-4-108. Enforcement. (1) ~~If a written complaint alleging violation is made to the department or if the department has reason to believe that a person has violated this part or any rule thereunder and if a violation is found~~

~~to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act.~~ If the department has reason to believe that a violation of this part or a rule made under it has occurred, it may have written notice served personally or by mail to the last-known address of the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action which the department requires, and the time within which the action is to be taken. For the purpose of this part, service by mail is complete on the date of mailing. The alleged violator may request a hearing before the board no later than 30 days after service of a notice under this section. If a request is filed, a hearing shall be held within a reasonable time.

(2) In addition to or instead of issuing an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in this part."

Section 6. Section 76-4-109, MCA, is amended to read:

"76-4-109. Penalties. (1) A person violating any provision of this part, except 76-4-122(1), or any rule or order issued under this part is guilty of an offense and subject to a fine of not to exceed $1,000.

(2) In addition to the penalty specified in subsection (1), a person who violates any provision of this part or any

rule or order issued under this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

~~(2)~~(3) ~~Action~~ Penalties imposed under subsection (1) or (2) does do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy. In any action filed by the department for injunction, the department, if it prevails, is entitled to collect a reasonable attorney fee based on the salary of the staff attorney representing the department. If the department does not prevail, reasonable attorney fees shall be awarded to the prevailing party.

~~(3)~~(4) The purpose of this section is to provide additional and cumulative remedies."

Section 7. Section 76-4-121, MCA, is amended to read:

"76-4-121. Restrictions on subdivision activities. ~~Until~~ Unless the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste, that the subdivision is subject to 76-4-128 and has met the standards provided in this part, or that the department has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat or subdivision certificate of survey with a county clerk and recorder, make disposition of any lot within a subdivision,

erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision."

Section 8. Section 76-4-122, MCA, is amended to read:

"76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder ~~shall~~ may not file or record any ~~map--or~~ plat or subdivision certificate of survey showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat or subdivision certificate of survey for filing until one of the following conditions has been met:

(a) the person wishing to file the plat or subdivision certificate of survey has obtained approval of the local health officer having jurisdiction and has filed the approval with the department, and the department has indicated by stamp or certificate that it has approved the plat or subdivision certificate of survey and plans and specifications and that the subdivision is subject to no sanitary restriction whenever department approval is necessary; or

(b) whenever department approval is not necessary, the person wishing to file the plat has obtained a certificate

from the governing body that the subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste or is in the category of subdivisions provided for in 76-4-125(1) and has been approved pursuant to 76-4-128."

Section 9. Section 76-4-123, MCA, is amended to read:

"76-4-123. Department review and approval required outside master planning areas. Outside master planning areas adopted pursuant to chapter 1, unless the subdivision is subject to the provisions of 76-4-128, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction."

Section 10. Section 76-4-124, MCA, is amended to read:

"76-4-124. Type of review and approval required within master planning areas and for certain other subdivisions. (1) Within master planning areas adopted pursuant to chapter 1, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal

facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, department approval is not necessary.

(2) The subdivisions described in 76-4-128(1) are not subject to sanitary restrictions if the local governing body certifies that the subdivisions have met the requirements of this part.

~~(2)~~(3) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body or the subdivision is not subject to 76-4-128, the person wishing to subdivide must obtain department approval as provided in 76-4-122(2)(a)."

Section 11. Section 76-4-125, MCA, is amended to read:

"76-4-125. Review of ~~subdivisions excluded from all or some of the provisions of the subdivision and platting act~~ development plans -- land divisions excluded from department review. (1) ~~When a subdivision as defined in this part is excluded from the provisions of 76-3-302 and 76-3-401 through 76-3-403, but not 76-3-201, and the subdivision is otherwise subject to the provisions of this part, plans~~ Plans and specifications of the a subdivision as defined in this part shall be submitted to the department or the local government where applicable. ~~and the department shall~~

~~indicate--by--certificate-that-it-has-approved-the-plans-and specifications-and-that-the-subdivision-is-not-subject-to--a sanitary--restriction.~~ The plan review by the department or the local government under 76-4-128 shall be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the department or to the local government, if it exercises the review authority granted to it under 76-4-128, a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the department.

(b) The department, or the local government where applicable, must ~~give-final-action-of~~ finally act on the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(c) The department, or the local government where applicable, shall indicate its approval or disapproval in writing. If the department approves a subdivision, it shall certify that it has approved the plans and specifications and that the subdivision is subject to no sanitary restrictions.

(2) A subdivision excluded from the provisions of chapter 3 shall be submitted for review by the department

according to the provisions of this part, except that the following divisions, unless used to evade the provisions of this part, are not subject to review by the department:

(a) the exclusions cited in ~~76-3-201 and~~ 76-3-204, as amended;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision; and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

Section 12. Section 76-4-128, MCA, is amended to read:

"76-4-128. Delegation of department review to local government. (1) The department shall delegate to a local government the authority to review a subdivision under this part when the subdivision involves:

(a) five or fewer parcels when each parcel will contain individual water and sewage facilities and the local government has qualified personnel to adequately ~~review~~ determine whether the water supply and sewage and solid waste disposal facilities proposed for the subdivision meet the standards prescribed by the department; or

(b) parcels 10 acres or larger in size when each parcel will contain individual water and sewage facilities and the local government has qualified personnel to adequately determine whether water supply and sewage and solid waste disposal facilities proposed for the subdivision meet the standards prescribed by the department.

(2) Whenever the governing body receives an application under subsection (1)(b) of this section and the number of parcels in the proposed subdivision exceeds nine, the governing body shall notify the department of the proposed subdivision. If the department determines that the proposed subdivision may require the preparation of a preliminary environmental review or an environmental impact statement under the provisions of the Montana Environmental Policy Act, the department shall review and approve or disapprove the proposed subdivision and the provisions of subsection (1) do not apply.

~~(2)~~(3) When a local government has conducted a review of a subdivision ~~containing five or fewer parcels pursuant to this section~~ described in subsection (1) of this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. ~~The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision.~~

(4) When a local government exercises the authority delegated to it by this section, the local government may choose to make the final decision on the proposed subdivision and shall accept legal responsibility for that decision.

~~(3)~~(5) (a) In delegating authority pursuant to this section, the department, when the local government makes a final decision pursuant to subsection (4), shall enter into an agreement with the local government wherein the department shall agree to transfer ~~not less than $10 of the fee per parcel~~ all of the fees collected pursuant to 76-4-105 to the local government for the review of subdivisions ~~containing five or fewer parcels~~ described in subsection (1) of this section.

(b) (i) When a local government exercises the delegated authority to conduct review pursuant to subsection (1) of this section but does not choose to make the final decision on proposed subdivisions pursuant to subsection (4) of this section, the department shall transfer to the local government not less than $10 of the fee per parcel collected pursuant to 76-4-105.

(ii) The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision."

-End-

APPENDIX N

RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON SUBDIVISION LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND TITLE 50, CHAPTER 60, PARTS 1 AND 3, TO CONFORM WITH PREVIOUSLY ENACTED AUTHORITY FOR COUNTIES TO ADOPT BUILDING CODES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any <u>county or</u> municipality, including departments, boards, bureaus, commissions, or other agencies of the state<u>, county,</u> or a municipality relating to the design, construction, reconstruction, alteration, conversion,

repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Local building department" means the agency or agencies of any county or municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(7) "Local legislative body" means the council or commission charged with governing the county or municipality.

(8) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9) of

this section.

(9) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the council may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 1/2 miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(11) "Public place" means any place which a <u>county, a</u> municipality, or <u>the</u> state maintains for the use of the public or a place where the public has the right to go and be.

(12) "Recreational vehicle" means anything defined as a

recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 2. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) Outside municipalities and their jurisdictional area, as defined by 50-60-101(9), and in counties that have not adopted a county building code, parts 1 through 4 apply to "public places", as defined in 50-60-101(11).

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(3) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or

desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable."

Section 3. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of ~~municipalities~~ local governments. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area shall be the responsibility of the municipalities of the state, and outside the municipal jurisdictional area, the counties have that responsibility.

(2) Each county or municipality may:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state, county, or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in

accordance with the applicable provisions of the state, county, or municipal building code, subject to the powers of variance or modification granted to the department;

(c) order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state, county, or municipal building code; orders may be served upon the owner or his authorized agent personally or by sending by registered or certified mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building; any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order;

(d) issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required;

(e) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations;

(f) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the

applicable provisions of the state, county, or municipal building code."

Section 4. Section 50-60-107, MCA, is amended to read:

"50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state, county, or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all ~~municipal~~ local governmental agencies as to all matters set forth, and no order, directive, or requirement at variance therewith may be made or issued by any other state or ~~municipal~~ local governmental agency."

Section 5. Section 50-60-109, MCA, is amended to read:

"50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state, county, or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section will be governed by the Montana Rules

of Civil Procedure."

Section 6. Section 50-60-110, MCA, is amended to read:

"50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code, a county building code, or a municipal building code is guilty of a misdemeanor."

Section 7. Section 50-60-303, MCA, is amended to read:

"50-60-303. Municipal and county appeal procedure. (1) If a municipality or a county adopts a municipal or county building code, it shall also establish an appeal procedure by municipal ordinance or by county resolution which is acceptable to the department.

(2) If a municipality or a county does not adopt a code, appeals on the application of the state building code within the municipal or county jurisdictional area shall be made to the department."

-End-

APPENDIX O

NOT RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING MUNCIPAL GOVERNING BODIES JURISDICTION TO CREATE SPECIAL IMPROVEMENT DISTRICTS WITHIN THE 4 1/2-MILE RADIUS OF THE LIMITS OF THE MUNICIPALITY WHEN A QUALIFIED MASTER PLAN HAS BEEN ADOPTED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Creation of special improvement districts within a 4 1/2-mile radius of a municipality. (1) A municipal governing body may create a special improvement district for the purposes described in 7-12-4102 in an area within the 4 1/2-mile radius of the limits of the municipality for which a master plan containing a land-use plan, a housing plan, and a public services plan has been adopted if the governing body determines that creation of the special improvement district would be in the public interest.

(2) For purposes of this section, the governing body is granted extraterritorial jurisdiction over the area within the 4 1/2-mile radius of the limits of the municipality.

(3) Whenever a municipal governing body exercises the authority granted to it by this section, the procedures

established in Title 7, chapter 12, part 41, apply to the creation, financing, and administration of the special improvement district.

-End-

APPENDIX P

NOT RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING COUNTY GOVERNING BODIES THE AUTHORITY TO INITIATE THE CREATION OF RURAL IMPROVEMENT DISTRICTS WITHIN A FOUR AND ONE-HALF MILE RADIUS OF MUNICIPALITIES FOR WHICH A QUALIFIED MASTER PLAN HAS BEEN ADOPTED; AND REQUIRING THE GOVERNING BODY TO INITIATE THE PROCESS UPON PETITION OF ONE PERCENT OF THE QUALIFIED FREEHOLDERS IN THE PROPOSED DISTRICT; AMENDING 7-12-2102 MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-12-2102, MCA, is amended to read:

"7-12-2102. Authorization to create rural improvement districts ~~upon petition.~~ [1] whenever the public interest or convenience may require and upon the petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water and maintaining sanitary and storm sewers,

light systems, waterworks plants, water systems, sidewalks, and such other special improvements as may be petitioned for.

(2) For an area within a 4 1/2-mile radius of incorporated cities and towns but outside the corporate boundary of the municipality, for which such area a master plan containing a land use plan, a housing plan, and a public services plan has been adopted, the board of county commissioners:

(a) may initiate the creation of a special improvement district;

(b) shall, upon petition by 1% of the qualified freeholders in the district for which the special improvement district is proposed, initiate the process leading to creation of a special improvement district."

-End-

APPENDIX Q

NOT RECOMMENDED BY COMMITTEE

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 76-3-610, MCA, TO PROVIDE FOR ADDITIONAL CONDITIONS UPON FINAL PLAT APPROVAL."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within 1 year, except as described in subsection (3).

(3) Whenever the department of health and environmental sciences compiles either a preliminary environmental review or an environmental impact statement

pursuant to Title 75, chapter 1, MCA, and the governing body has issued a preliminary plat approval, the governing body may impose additional conditions on final plat approval if the preliminary environmental review or environmental impact statement contains information that was not available to the governing body at the time it issued its preliminary plat approval."

-End-

Department of Health and Environmental Sciences
STATE OF MONTANA HELENA, MONTANA 59601
A. C. Knight, M.D.
DIRECTOR

LEGAL DIVISION
1400 Eleventh Avenue
Helena, MT 59601
Phone 449-2630

April 5, 1978

Art Sheldon, Chairman
Legislative Committee on Subdivisions

Dear Mr. Sheldon:

After some discussion with Deborah Schmidt of the Legislative Council, I decided that it might be helpful to the committee for me to describe some of the problems that the Subdivision Bureau now has in administering its Act in combination with the Montana Environmental Policy Act.

Currently, as you know, there are two different subdivision acts, the Subdivision and Platting Act which is adminstered by local governments, and the Sanitation in Subdivisions Act which is administered by the Department of Health and Environmental Sciences. The Subdivision and Platting Act calls for local government consideration of a variety of environmental factors in arriving at its decision. The Sanitation in Subdivisions Act goes primarily to the issues of water supply, sewage and solid waste disposal facilities and the adequacy of proposed subdivision sites for those facilities. Transposed over DHES review, however, are the requirements of the Montana Environmental Policy Act. That Act requires that the state, in addition to its statutorily stated obligations in other areas of the law, must, for any major action significantly affecting the quality of the human environment, do an environmental impact statement. This applies to DHES review of subdivisions in some cases. The problem is that the Supreme Court in the Beaver Creek South decision indicated that the Department has only the power to approve or deny a subdivision on the basis of sewage, water supply and solid waste criteria. It did not, however, exempt us from the obligation of doing environmental impact statements. Rather, it said merely that MEPA is not regulatory but procedural and then declined to rule on the adequacy of the particular statement which at that time was in dispute.

As a result of this situation the Health Department is faced, in situations of major subdivisions clearly having a significant impact on the area, with doing an environmental impact statement upon which it cannot act unless it identifies a problem with sewage, water supply or solid waste disposal. To the developer, who must also go through some form of local review, this seems repetitive and, very often, burdensome. In some circumstances that complaint is well taken. On the other hand, the law still requires the preparation of EIS's by the Department. A number of groups have made it clear that the Department can expect to

face suit if it declines to do an impact statement where on is clearly warranted. Accordingly, the Department, without being able to take meaningful action upon its findings in an EIS, finds itself in a state of limbo.

This raises the question of what purpose an impact statement is supposed to serve. In its strictest sense, where the state agency is itself initiating the particular project, and not some applicant to the Department, it can be an effective means by which to mitigate or avoid adverse impacts caused by a project. On the other hand, in the situation where the court, as here, has limited the scope of MEPA it does not have any immediate effectiveness. It has been suggested, perhaps correctly so, that environmental impact statements have a purpose beyond the immediate projects. In a longer range perspective, environmental impact statements may provide the legislature with valuable information to guide it in its future activities in terms of describing and determining state policy. It is, nonetheless, difficult to convince a developer of the necessity of an impact statement on that basis. As a result, it may be desirable for the legislature to clarify, to itself at least, just what purpose the environmental impact statement process is to fulfill. With that background, I would like to discuss a number of potential alternatives to deal with the dilemma created by MEPA and the subdivisions laws.

The most obvious solution, but perhaps not the best, would be to take the Subdivision Bureau out of MEPA altogether and not require it to do environmental impact statements on subdivisions. This would certainly quell some of the protests against duplicate review. If, however, the legislature deems this is the feasible alternative, it might be well to put reporting obligations on the local government similar to those described by MEPA. As it stands now, local governments can very often get by with cursory and ineffective review of the environmental impacts of subdivisions. At times, this review has amounted to nearly no review at all. In those situations it might be desirable to have something along the lines of a document as detailed as an environmental impact statement done. Thus, to provide the depth of review that is contemplated by environmental impact statements, it may behoove the legislature to transfer that kind of reporting requirement to the local government with some legal mechanism by which the local government could finance such detailed reviews, such as a fee provision similar to that already found in MEPA.

A second possible alternative, and one which a number of people have indicated would be undesirable, would be to declare MEPA to be substantive with regard to the Department of Health and Environmental Sciences review authority. In other words, enact provisions requiring the Department to respond to the findings it makes in an environmental impact statement by requiring mitigation of impacts or, in situations where the impacts are great enough, requiring disapproval of certain subdivisions. This alternative seems to run counter to the

current trend towards placing broad-based land decisions at the local level. On the other hand, it would have the advantage of making MEPA a meaningful exercise beyond its possible long-range significance for the legislature's guidance.

A third alternative, and one which incorporates elements of both of the proposals described above, would be to change the order of review as it now occurs. At this point, the DHES involvement is usually initiated at some point after the local review has begun or even, in certain cases, after the local review has been completed. As a result, the local governing body derives no guidance or benefit from the environmental impact statement in its own deliberations. Thus, if the DHES review occurred first, with its EIS or Preliminary Environmental Review completed prior to the local review, the local governing body would have the benefit of the state's research, and in those cases where an environmental impact statement was done, would have the benefit of a relatively complete investigation of the impacts of the particular subdivision. In addition, since the local governing body may refuse or approve a subdivision on a much broader based set of criteria than DHES, it would give MEPA substance in that the local governments could act upon the state's findings. This arrangement would give the local governments a more effective tool in evaluating subdivisions and their impacts, and at the same time would confine the DHES's activity in terms of approval or denial to the specific areas of sewage, water supply and solid waste disposal. As a result, environmental impact statements and preliminary environmental reviews would be more meaningful for the immediate projects upon which they are done, in addition to providing baseline data for legislative consideration.

If you have any questions about any of this discussion, please feel free to contact me at your convenience. My number is 449-2630.

Sincerely,

Stan Bradshaw

Stan Bradshaw
Legal Division

APPENDIX S

TESTIMONY BEFORE THE INTERIM LEGISLATIVE
COMMITTEE ON SUBDIVISION LAWS

APRIL 6, 1978

Steven J. Perlmutter
Power Block, Room 225
Helena, MT. 59601
443-5653

INTRODUCTION

This committee has been charged with the difficult, but crucial, task of reviewing Montana's laws relating to subdivision development in the state. An important and controversial part of subdivision regulation is the environmental review mandated by the Montana Environmental Policy Act (MEPA) (69-6501 et. seq., R.C.M. 1947). Among other provisions, MEPA requires state agencies to prepare an environmental impact statement (EIS) prior to taking any "major actions...significantly affecting the quality of the human environment." (69-6504(b)(3), R.C.M. 1947). This EIS must include an assessment of environmental impacts, any adverse environmental effects which may result, alternatives to the proposed action, and an analysis of long-term versus short-term consequences.

It is well established that Department of Health and Environmental Sciences (DHES) review of major subdivisions under the Sanitation in Subdivisions Act (6905001, et. seq., R.C.M. 1947) is a state action requiring environmental review pursuant to MEPA. This is established by DHES's own regulations [MAC 16-2.14(10)-S14340(3)(c)], and is specifically recognized in the Sanitation in Subdivision Act itself (69-5003(8)(b), R.C.M. 1947). What is less clear is the extent to which the DHES may base its decision to approve or reject a subdivision on the environmental evidence compiled in an EIS.

The Department of Health has argued that its discretion is restricted to those factors explicitly set out in the Sanitation in Subdivisions Act: water supply, water pollution, and solid waste management; that while adverse impacts on wildlife, power needs, transportation needs, social services, etc. may be regrettable, there is nothing the DHES

can do about such things; and that it is therefore a waste of time and money to conduct a comprehensive review of such factors. Consequently, DHES is requesting clarification of its authority: either expressly grant the Department the authority to base subdivision decisions on general environmental considerations, or relieve the Department of the responsibility of preparing EISs on subdivision.

The question of DHES's (or any agency's) decision-making authority under MEPA is admittedly a difficult legal issue which has not yet been finally settled by the courts (Beaver Creek notwithstanding). Strong arguments can be put forth on both sides of the question. It is not my intention, however, to argue that question before this committee. I feel that the question of MEPA's effects on agency decision-making authority should be settled either in the courts, or by legislative action after a thorough review of the implications for all state government activity - not just subdivision activity. In short, it is a question which goes beyond the scope of this committee's responsibilities.

What I do wish to suggest to this committee is that, even if DHES discretion is limited to water quality, water supply, sewage and solid waste considerations, there is still a vital role to be played by comprehensive environmental review, and that an EIS addressing the full range of environmental impacts caused by subdivision development serves a number of important functions which extend far beyond the immediate decision on the particular subdivision being reviewed.

I. Few EISs are written.

To keep the discussion in proper perspective, it must be kept in mind that the number of preliminary environmental reviews (PERs) and EISs actually written on subdivisions is quite small when compared to the total number of subdivisions reviewed by state and local officials. During the period July 1, 1975 to June 30, 1976, for example, only 1 EIS was distributed by the Subdivision Bureau. Only major subdivisions (over 50 lots), or subdivision located near critical areas, are subject to the full EIS procedure. The burden on developers and agency personnel is therefore not as great as might be inquired.

II. DHES does have regulatory authority over water, sewer, and solid waste, and an EIS on those matters is crucial.

Regardless of how the difficult question described in the introduction is resolved, there is no doubt that DHES does have decision-making authority over subdivision with respect to water, sewer and solid waste considerations. The EIS process is (or should be) an important decision-making tool to guide DHES officials in those areas. Where a subdivision is likely to have significant impacts on water quality or solid waste problems, the Department is obligated by MEPA to discuss such factors in an EIS before a final decision is made. In general, discussion of water, sewer and solid waste impacts already constitute the bulk of EIS material. There is simply no rationale or justification for exempting this important review from the procedures of MEPA, where the Department of Health does have explicit decision-making authority.

III. A comprehensive EIS serves many important functions.

Even if it is determined that the DHES may not base its specific subdivision decisions on general environmental grounds, there are many important reasons for including a comprehensive discussion of environmental impacts in subdivision EISs. First, the law specifically requires that all environmental impacts be discussed (69-6504(b)(3)(i) and (ii), R.C.M. 1947). Secondly, while local officials are not required by the Subdivision and Platting Act (11-3859, et. seq., R.C.M. 1947) to base their decisions on state review, there is nothing to prevent them from making use of a state EIS as resource and information document to guide their decisions. Furthermore, in considering future subdivision applications in the same region, previously written EIS's can greatly facilitate local review of the environmental issues involved. (Note: the Health Department's EIS is completely different in scope and content from the environmental assessment prepared by a developer under the Subdivision and Platting Act. For the local officials to make use of both documents would involve little or no redundancy.) Similarly, local planning boards can make use of the information in past EISs to guide them in adopting or revising comprehensive growth plans.

State agencies can also use the information compiled in previously written subdivision EISs to aid them in establishing policy or implementing programs: EIS discussions of wildlife impacts may aid the Fish and Game Department in administering game management programs in areas subject to subdivision pressures; discussions of subdivision impacts on transportation needs may assist the Department of Highways in its program development; review of long-range water quality

implications will help the DHES to meet its statutory responsibility to establish a comprehensive, state-wide program for water quality maintenance.

Perhaps most important, EISs can serve as information resources and policy-formulation tools for the general public and the legislature. EISs written on subdivisions over the past seven years provide a unique compilation of the effects of subdivision development which could serve as an invaluable research tool for this committee in its study of subdivision laws in general.

To sum up, comprehensive environmental impact statements can be extremely important informational and policy-analysis documents for local and state officials, the Legislature, and the public, regardless of the Health Department's decision-making discretion over an individual subdivision.

IV <u>The EIS process is a "good government" measure which need not create additional administrative burdens</u>.

A recent study of the EIS process among federal agencies (Council on Environmental Quality, "EISs: An Analysis of Six Years' Experience," March, 1976.) concluded that the costs in time and money of EIS preparation could not easily be determined, because, in many cases, the EIS procedure had been so thoroughly integrated into the agency's normal operating routine that specific "environmental review costs" could not be separated from routine operating costs. Any responsible government agency which makes decisions having significant social or environmental impacts <u>ought</u> to have a well-defined process for

defining and analyzing those impacts, identifying alternative actions which may miligate adverse effects, providing for public input, and presenting the relevant information to the decision-makers before the decision is made. This is simply a matter of good management which should have been expected of public officials even before MEPA. The EIS process simply requires that those review procedures (which ought to be established as a matter of good government anyway) be documented in written form, so that the basis of agency decisions can be reviewed by the public, the legislature and, if necessary, the courts. Environmental review and sensitivity ought to be an integral part of all agency actions and procedures and the extent to which EIS preparation remains an extraneous and costly procedural burden is a measure of the agency's failure to properly integrate environmental review into its standard procedures.

To be sure, there will be practical administrative difficulties to be ironed out, but such problems can be handled if approached creatively. MEPA directs agencies to develop new methods and procedures to assure that environmental values receive appropriate consideration (69-6504(b)(2), R.C.M. 1947). Thus the legislature was aware that there would be administrative problems to work out. But agencies were directed to solve those problems, not to seek exemptions from the law!

V State policy should encourage environmentally sound development. As mentioned earlier, relatively few EISs are prepared on subdivisions, only large or critically located subdivisions are subject to the EIS

process. If a proposed subdivision is well-planned and well-situated, the EIS problem need never arise. But if a developer chooses to locate a major subdivision in such a way as to create significant environmental and social impacts, state policy is, and should be, to subject such proposals to increased public scrutiny. When subdivisions are well-planned and located, and are sensitive to environmental and social considerations, it is appropriate to seek ways to streamline the approval process. But in those (increasingly few) cases where environmental considerations have been inadequately considered by the developer, it should not be state policy to encourage such activity. If subdivision review were exempted from MEPA requirements, developers would no longer have the incentive to include environmental values in their considerations, since they would no longer have to hear the procedural consequences should they fail to do so. Futhermore, if the Subdivision Bureau were granted this exemption from MEPA, other state agencies would soon be arguing for similar exemptions for other government programs. MEPA would eventually be so riddled with exemptions as to be worthless.

CONCLUSION

In the Montana Environmental Policy Act, the Legislature expressed a policy of concern for environmental problems, and directed state agencies to seek new ways to improve and coordinate their activities so that environmental values would receive appropriate consideration in all state programs. Administrative difficulties remain to be worked out. No important redirection of state policy can be accomplished without some difficulty. But the existence of such

difficulties is no justification for granting exemptions from state policy, nor for eroding the state's determination to continue to address and respond to the needs of Montana's environment.